

Volume 7

Pages 746 - 1023

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Yvonne Gonzalez Rogers, Judge

THE ESTATE OF SHALEEM TINDLE,)	
)	
Plaintiff,)	
)	
VS.)	NO. CV 18-05755-YGR
)	
JOSEPH MATEU, III,,)	
)	
Defendant.)	
_____)	

Oakland, California
Tuesday, March 10, 2020

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiffs:

LAW OFFICES OF JOHN L. BURRIS
7677 Oakport Street - Suite 1120
Oakland, CA 94621

**BY: JOHN L. BURRIS, ESQUIRE
BENJAMIN NISENBAUM, ESQUIRE
LATONIA ROBINSON, ESQUIRE**

For Defendant:

ALLEN, GLAESSNER, HAZELWOOD & WERTH LLP
180 Montgomery Street - Suite 1200
San Francisco, CA 94104

**BY: DALE J. ALLEN, ESQUIRE
PATRICK MORIARTY, ESQUIRE**

Reported By: Pamela Batalo-Hebel, CSR No. 3593, RMR, FCRR
Official Reporter

I N D E X

Tuesday, March 10, 2020 - Volume 7

	<u>PAGE</u>	<u>VOL.</u>
Plaintiffs Rest	826	7
Defense Rests	945	7
Jury Instructions	946	7
Closing Argument by Mr. Nisenbaum	953	7
Closing Argument by Mr. Moriarty	964	7
Rebuttal Argument by Mr. Burris	1001	7
 <u>PLAINTIFFS' WITNESSES</u>	 <u>PAGE</u>	 <u>VOL.</u>
<u>TURNER, CIARA (RECALLED)</u>		
(PREVIOUSLY SWORN)	764	7
Cross-Examination resumed by Mr. Moriarty	764	7
Redirect Examination by Mr. Burris	808	7
Recross-Examination by Mr. Moriarty	818	7
Redirect Examination by Mr. Burris	825	7
 <u>DEFENDANT'S WITNESSES</u>	 <u>PAGE</u>	 <u>VOL.</u>
<u>MATEU, JOSEPH</u>		
(SWORN)	757	7
Direct Examination by Mr. Moriarty	757	7
Cross-Examination by Mr. Nisenbaum	760	7
 <u>CARDOZA, MICHAEL</u>		
(SWORN)	827	7
Direct Examination by Mr. Moriarty	827	7
Cross-Examination by Mr. Nisenbaum	853	7
Redirect Examination by Mr. Moriarty	873	7
Recross-Examination by Mr. Nisenbaum	881	7
Examination by The Court	882	7
Redirect Examination by Mr. Moriarty	883	7
Recross-Examination by Mmr. Nisenbaum	885	7
Examination by The Court	887	7
 <u>WONG, HELENA</u>		
(SWORN)	891	7
Direct Examination by Mr. Moriarty	892	7
Cross-Examination by Mr. Nisenbaum	911	7
Redirect Examination by Mr. Moriarty	917	7
Examination by The Court	920	7
Redirect Examination by Mr. Moriarty	922	7
Recross-Examination by Mr. Nisenbaum	923	7

I N D E XDEFENDANT'S WITNESSESPAGE VOL.EVANS, DEMOREA

By Deposition Deposition

925 7

E X H I B I T STRIAL EXHIBITSIDEN EVID VOL.

10B

752 7

101A, 101B, 101C, and 101D

753 7

107

769 7

108

817 7

Tuesday - March 10, 2020

7:59 a.m.

P R O C E E D I N G S

---000---

(Proceedings were heard out of presence of the jury:)

THE COURT: Is there anything we need to talk about?

MR. BURRIS: Not to my knowledge.

MR. MORIARTY: No.

(Discussion held off the record.)

THE CLERK: Calling Civil Action 18-5755, Estate of
Sahleem Tindle vs. Mateu.

Counsel, please state your appearances.

MR. NISENBAUM: Ben Nisenbaum for the plaintiffs.

MR. MORIARTY: Patrick Moriarty and Dale Allen with
Joseph Mateu.

THE COURT: Okay. Good morning.

Ms. Banks-Reed, good morning.

Mr. Mateu, good morning.

THE DEFENDANT: Good morning.

THE COURT: So we will finish up with Ms. Turner;
right?

MR. NISENBAUM: Correct.

THE COURT: And then what? The plaintiff.

MR. NISENBAUM: That would be the close of plaintiff's
case, subject to any exhibits, of course, that haven't been
moved in that need to be. I think everything has been moved

1 in.

2 **THE COURT:** Well, we should go through them.

3 **MR. NISENBAUM:** Right.

4 **THE COURT:** So then the plaintiff will close.

5 Then what's the defense bringing?

6 **MR. MORIARTY:** We are going to call Michael Cardoza
7 first. Second we'll call Helena Wong. Third we will call
8 Joseph Mateu for the same brief one about the gun. I think
9 that should be about four or five minutes. And then finally we
10 will read in the testimony of Demorea Evans, and at that point
11 we'll rest.

12 **THE COURT:** Okay. And then -- let's see. And then
13 we'll do closings.

14 **MR. NISENBAUM:** Yes.

15 **THE COURT:** Okay. I have ordered lunches in for them
16 so that we could try to get it all in today.

17 **MR. MORIARTY:** Right.

18 **MR. NISENBAUM:** Perfect.

19 **THE COURT:** I will probably give them half an hour, I
20 think, for lunch, but we will hopefully do it once -- hopefully
21 the timing will work. I'm trying to -- we'll get it to them at
22 some point.

23 Let's look at exhibits here. So what I show as having
24 been admitted -- let me know when you're ready.

25 **MR. NISENBAUM:** I'm ready.

1 **THE COURT:** So on the 7 series, A, B, C, D, E, then H,
2 then O.

3 **MR. NISENBAUM:** A through E and then H. That's right.
4 Definitely H. And then -- I think that's correct.

5 **THE COURT:** Okay. On the 8 series, I just have B, C,
6 and G.

7 **MR. NISENBAUM:** B -- we also had G; right?

8 **THE COURT:** Right. B, C, and G.

9 **MR. NISENBAUM:** Correct.

10 **THE COURT:** Okay.

11 **MR. NISENBAUM:** That's what I have.

12 **THE COURT:** On the 9 series, A through X.

13 **MR. NISENBAUM:** Correct.

14 **THE COURT:** On the 10 series, I have 10B-1 and 10D.
15 We used 10B, but I don't have it as being admitted.

16 **MR. NISENBAUM:** That should be admitted. That's the
17 unredacted version.

18 **MR. MORIARTY:** Yeah. That's fine. That's the entire
19 one.

20 **MR. NISENBAUM:** It's the entire one. I believe so.

21 **THE COURT:** All right. So 10B is admitted.

22 **MR. NISENBAUM:** Yes.

23 (Trial Exhibit 10B received in evidence)

24 **THE COURT:** And then I have 103A, E, E-1, and H.

25 **MR. MORIARTY:** Correct.

1 (Mr. Burris, enters the courtroom.)

2 **THE COURT:** Good morning, Mr. Burris. Are you fine
3 now?

4 **MR. BURRIS:** Great.

5 **MR. NISENBAUM:** So we have 103 --

6 **THE COURT:** A, E, E-1, and H.

7 **MR. NISENBAUM:** I think that's correct.

8 **THE COURT:** Okay.

9 **MR. NISENBAUM:** Is there anything missing?

10 **THE COURT:** Anything else from your side?

11 **MR. MORIARTY:** No.

12 And then, Your Honor, as with last trial, it was -- we put
13 in 103A -- excuse me. 101A, B, C, and D, and we've had those
14 remarked with new tags on it that I'm going to -- it's the same
15 pictures. It's just that we need to remark them. I will give
16 one to the Court and one to Frances.

17 **THE COURT:** Okay.

18 **MR. MORIARTY:** Those will be the final ones today.

19 **THE COURT:** Any objection to 101A, B, C, and D?

20 **MR. NISENBAUM:** No.

21 **THE COURT:** All right. Those are admitted.

22 (Trial Exhibits 101A, 101B, 101C, and 101D received in
23 evidence)

24 **THE COURT:** And then do we have any issues with
25 respect to transcript impeachment?

1 **MR. MORIARTY:** No, we don't.

2 **THE COURT:** Did you bring one in case you're going to
3 have to impeach?

4 **MR. MORIARTY:** Yes. On Thursday, the Court said that
5 you have a copy, and then if we get to the point where we need
6 to impeach, I will have an extra copy of the prior trial
7 transcript for Ms. Turner.

8 There is only one question that I had that I think I can
9 make do with. At one point, there is a question I asked her at
10 the prior trial that refers to a jury in the question, and
11 because the motion in limine is that we don't refer to a prior
12 trial, what I had anticipated, if it's okay with the Court, if
13 she needs to be impeached there, I'm not going to say, "Are you
14 telling this jury." I'll just ask the question as it was posed
15 without any reference to the jury.

16 I don't think there is any other references to the jury
17 that would violate our motion in limine not to refer to the
18 prior trial.

19 **THE COURT:** Okay. All right. Good enough.

20 So as soon as they get here, we'll get started. We will
21 stand in recess until then. Thank you.

22 (Recess taken at 8:08 a.m.)

23 (Proceedings resumed at 8:22 a.m.)

24 (Proceedings were heard out of presence of the jury:)

25 **THE COURT:** They're all here. We're ready.

1 **MR. BURRIS:** Ciara is not here yet. I was thinking we
2 could go on to reading the testimony.

3 **MR. MORIARTY:** No. We're doing that last.

4 **THE COURT:** Where is she?

5 **MR. BURRIS:** I don't know. I assume she's on her way.
6 She lives in Antioch.

7 **THE COURT:** Can someone call her?

8 **MR. BURRIS:** We can try, yeah.

9 **MR. NISENBAUM:** I'm trying to reach Ms. Turner.

10 **THE COURT:** And?

11 **MR. NISENBAUM:** No answer. She may be under the
12 impression that 8:30 is the start time. I'd expect her to be
13 answering her phone either way.

14 **THE COURT:** I would expect her to be, too.

15 (Off the record.)

16 **MR. NISENBAUM:** Your Honor, Ms. Turner indicated that
17 she's running about 10 minutes late and that she will be here
18 at 8:40. I apologize.

19 **MR. ALLEN:** Mr. Moriarty and I talked about this. If
20 you would like, Joe Mateu needs to go back on the stand for
21 maybe ten minutes, and it doesn't impact the cross-examination
22 of Turner, so we are willing to do that.

23 **THE COURT:** All right. Let's put him on first.

24 **MR. NISENBAUM:** She's taking public transportation.

25 **THE COURT:** Let's bring them in. We will start with

1 Mr. Mateu.

2 **MR. MORIARTY:** This is going to be very quick, though,
3 Your Honor.

4 **THE COURT:** That's fine. We have ten minutes.

5 (Proceedings were heard in the presence of the jury:)

6 **THE COURT:** We are back on the record. The record
7 will reflect the jury is with us.

8 Good morning. Welcome back.

9 You may all be seated. Our goal is to complete phase 2
10 today. We'll take lunch when your sandwiches get here or
11 around that time, and we'll probably take like half an hour
12 whenever that happens so that you don't get indigestion because
13 I'm forcing you to eat those sandwiches so quickly.

14 I appreciate everybody being back. I know folks are
15 concerned about what's going on out there in the greater world,
16 but these days, I am told we don't shake hands anymore. We
17 kind of pump elbows, do the pumping-elbow thing. There is a
18 lot of soap back there. Wash your hands a lot. We're still
19 operating business as usual around here so so far so good.

20 No one is feeling like they have a fever; right? If you
21 have a fever, let me know. I'll send you home. And no flu
22 symptoms; right? No. Okay. Good.

23 All right. Ms. Turner is running a little late, so we're
24 going to take Mr. Mateu, who has to -- in this phase he has a
25 little bit of extra testimony.

1 Mr. Mateu, if you will come back, sir, please.

2 **JOSEPH MATEU,**

3 called as a witness for the Defendant, having been duly sworn,
4 testified as follows:

5 **THE WITNESS:** I do.

6 **THE CLERK:** Please be seated. Then please state your
7 full name and spell your last name.

8 **THE WITNESS:** Joseph Mateu, M-A-T-E-U.

9 **THE COURT:** Good morning.

10 **THE WITNESS:** Good morning, Your Honor.

11 **THE COURT:** You may proceed.

12 **MR. MORIARTY:** Thank you, Your Honor.

13 **DIRECT EXAMINATION**

14 **BY MR. MORIARTY:**

15 **Q.** Good morning.

16 **A.** Good morning.

17 **Q.** Sergeant, I just want to ask you a few questions about the
18 shooting incident of January 3, 2018.

19 You had a firearm that day. Could you explain to the jury
20 what type of firearm that was?

21 **A.** Glock 22. Basically a .40 caliber semiautomatic handgun.

22 **Q.** What type of ammunition did you use that day in your .40
23 caliber Glock?

24 **A.** Federal brand, .40 caliber.

25 **Q.** How many times did you shoot your firearm on January 3,

1 2018?

2 **A.** Three times.

3 **Q.** When you shot your firearm, did you aim at Mr. Tindle?

4 **A.** Yes, I did.

5 **Q.** Did you hit him with each of the shots?

6 **A.** Yes, I did.

7 **Q.** Did you fire your weapon at Mr. Rayvell Newton?

8 **A.** No.

9 **Q.** To your knowledge, did any of your shots hit Mr. Newton?

10 **A.** No. None.

11 **Q.** After your shots were fired, did you recover a weapon from
12 the sidewalk?

13 **A.** Yes, I did.

14 **Q.** What did you do with that?

15 **A.** I picked up the SIG Sauer and I put it in the front
16 driver's seat of my partner's patrol vehicle and locked it in
17 there.

18 **Q.** After the shooting incident, you remained at the scene of
19 7th and Chester; correct?

20 **A.** Yes.

21 **Q.** Did Mr. Rayvell Newton remain at the scene?

22 **A.** Yes.

23 **Q.** Was he handcuffed?

24 **A.** Yes.

25 **Q.** Was he searched?

1 **A.** Yes.

2 **Q.** To your knowledge, was any weapon found on him?

3 **A.** There was no weapons on him.

4 **Q.** After the shooting, did you learn that Mr. Rayvell Newton
5 was hit with a bullet?

6 **A.** Yes.

7 **Q.** What did you learn?

8 **A.** Well, while I was on scene, my partner was tending to him,
9 and he said that he's -- he was shot, and my partner asked him
10 "who shot you," and he pointed to Mr. Tindle and said "that
11 guy" or something to that relevance, to "that guy" or "him."

12 **Q.** Did you see if medical attention was given to Mr. Newton
13 while he was still on the scene?

14 **A.** Yes. By that -- by that time, OPD showed up, and I was
15 trying to look for a trauma kit inside my partner's patrol
16 vehicle, but then I just saw one -- a couple of the OPD
17 officers put a tourniquet on his leg.

18 **Q.** That would be the leg of Mr. Newton?

19 **A.** Yes.

20 **MR. MORIARTY:** That's all the questions I have,
21 Your Honor.

22 **THE COURT:** Okay. Anything on that, Mr. Nisenbaum?

23 **MR. NISENBAUM:** Very briefly.

24

25

CROSS-EXAMINATION

BY MR. NISENBAUM:

Q. How long were you at the scene after you fired your weapon?

A. 15, 20 minutes.

Q. Okay. And you had a chance to look around in the area, the immediate area?

A. I mean, it was very chaotic at that time.

Q. I understand. But you did have a chance to look at some of the area; correct?

A. Yeah.

Q. Did you notice gunshots into the barber shop window?

A. No.

Q. So you didn't see that. And the words that Mr.-- that Mr. Newton told you --

A. He didn't tell me. He told my partner.

Q. Oh. So you actually don't know that. You don't know what Mr. Newton said?

A. Well, actually I do because I was probably about 10, 15 feet away.

Q. So the words that you heard Mr. Newton say, that's all he said; right?

A. Yes.

Q. Okay. He didn't tell you who started it then; right?

A. No.

1 **MR. NISENBAUM:** Thank you. No further questions.

2 **THE COURT:** Okay. Any questions? No? All right.

3 Sir, you may step down.

4 All right, Ladies and Gentlemen. Then we'll just, I
5 guess -- do we know if she's in the building yet?

6 **MR. NISENBAUM:** I will check. She indicated she would
7 be here at 8:40. It's 8:35 now.

8 **THE COURT:** Right. But it takes time to get into the
9 building.

10 Okay. Why don't I go ahead and let you guys go back to
11 the jury room. We should just be a couple minutes, it looks
12 like. If I was a good joke teller, I would tell you jokes,
13 but...

14 (Proceedings were heard out of presence of the jury:)

15 **THE COURT:** So, Mr. Nisenbaum, you understand, if we
16 were on time limits, the clock would be ticking.

17 **MR. NISENBAUM:** I do understand. Absolutely.

18 **THE COURT:** I may dock your close if we get to the end
19 of the day and we still need time, so I hope she gets here.

20 **MR. NISENBAUM:** She said she's not in the building
21 yet.

22 (Off the record.)

23 **MR. NISENBAUM:** As of two minutes ago, she was not in
24 the building yet.

25 **THE COURT:** Mr. Nisenbaum, Mr. Burris, I'm not waiting

1 forever, and I can tell you that if she does not get here, I'm
2 going to strike her testimony, and you're going to close. So
3 you better figure out where she is.

4 **MR. NISENBAUM:** I'll try and reach her now, again.

5 (Off the record.)

6 **THE COURT:** Back on the record.

7 Ms. Turner is now 12 minutes late. We have no idea where
8 she is exactly.

9 **MR. BURRIS:** Well, we have an idea that she has
10 communicated with us and said she is close by.

11 I would only ask the Court to give due consideration to
12 the fact that this is a single mom with two children who are
13 small children. She indicated last week that her children were
14 not doing well, and she's making as much effort as she can to
15 be here on time. I recognize that she should be here, but she
16 isn't. I'm asking the Court to give due consideration to that.
17 And that we could, in fact, move on to testimony that is not
18 directly impacted by anything that she has to say.

19 I know the police officer is here, Cardoza is here. And I
20 also know we have testimony that is going to be reread to the
21 Court that has no impact as to her testimony.

22 I've got the issue. I want to make sure that we don't
23 have credibility issues unnecessarily generated, but it seems
24 to me that it's easiest enough to read the other testimony here
25 to allow for that --

1 **THE COURT:** Mr. Burris, as you well know, that
2 testimony is very good testimony for the defense, and the fact
3 that they want to read it at the end of their case is entirely
4 appropriate, and because your person is late, that shouldn't
5 impact their trial strategy.

6 In addition, you've got a lot of people who are showing up
7 for this trial, and someone could have helped Ms. Turner if
8 they had wanted to. And there's no one who apparently is
9 helping her.

10 She is asking this jury for a lot of money on behalf of
11 her children. The least she could do is be here on time.

12 **MR. BURRIS:** I'm not making excuses for it. I just
13 offered up an opportunity. That's all.

14 **THE COURT:** All right.

15 **MR. BURRIS:** And I recognize the strategy involved,
16 and I'm not trying to, in any way, impact in an unnecessary way
17 to that.

18 The testimony around the police officer, though, is a
19 little bit different than the reading of the testimony. But I
20 understand what the Court is saying and I understand the
21 defense strategy and all that, so I'm not trying to impinge
22 upon that. I was just offering a way and recognizing
23 Ms. Turner should be here. On the other hand, I think that a
24 little self-indulgence around that -- Court indulgence around
25 that. It's our time. That's all I'm asking.

1 **THE COURT:** Mr. Nisenbaum?

2 **MR. NISENBAUM:** She indicated she had just got off on
3 12th. She is a block away on foot. One block away.

4 **MR. BURRIS:** 12th Street BART?

5 **MR. NISENBAUM:** I believe so. Actually, the bus stop.
6 She was on the bus.

7 (Off the record.)

8 **THE COURT:** Let's call the jury in.

9 Ms. Turner, you may come back to the stand, please.

10 (Proceedings were heard in the presence of the jury:)

11 **THE COURT:** The record will reflect we are back in
12 session. Ms. Turner, is here.

13 Good morning, Ms. Turner.

14 **THE WITNESS:** Good morning.

15 **THE COURT:** I will remind you, you are still under
16 oath. You may proceed.

17 **CIARA TURNER,**

18 called as a witness for the Plaintiffs, having been previously
19 duly sworn, testified further as follows:

20 **CROSS-EXAMINATION** **(resumed)**

21 **BY MR. MORIARTY:**

22 **Q.** Good morning, Ms. Turner.

23 **A.** Good morning.

24 **Q.** You were last here on Thursday, and during that testimony
25 I asked you about some prior domestic violence incidents you

1 had with Mr. Turner. Do you remember those questions and
2 answers?

3 **A.** Yes.

4 **Q.** I asked you about a domestic violence incident that
5 happened in 2015, and you testified you had no memory of being
6 a victim of domestic violence in 2015; correct?

7 **A.** Correct.

8 **Q.** In May of 2015, you lived at 98 Blythedale, spelled
9 B-L-Y-T-H-E-D-A-L-E, Avenue in San Francisco; correct?

10 **A.** Correct.

11 **Q.** At the time of May, 2015, you were three months pregnant
12 with your daughter Sionye; correct?

13 **A.** I believe so, yes.

14 **Q.** She was born in the fall of 2015?

15 **A.** November.

16 **Q.** Is a gentleman by the name of Connel Ward your uncle?

17 **A.** Yeah.

18 **Q.** Who is Karmeiska Edwards?

19 **A.** Friend.

20 **Q.** On May 11, 2015, Ms. Edwards and Mr. Ward came to your
21 residence at 98 Blythedale Avenue; correct?

22 **A.** I think so.

23 **MR. BURRIS:** Objection. Relevancy, Your Honor.

24 **THE WITNESS:** I don't know.

25 **THE COURT:** Overruled.

1 **BY MR. MORIARTY:**

2 **Q.** And you testified that Mr. Ward was who? Is that your
3 uncle?

4 **A.** Family, yeah. Uncle.

5 **Q.** And that day of May 11, 2015, Mr. Ward called the police
6 to your residence at 98 Blythedale Avenue in San Francisco;
7 correct?

8 **A.** I'm guessing if that's what you see.

9 **Q.** That day you had an argument with Mr. Tindle?

10 **A.** I don't know. It could have been the argument with me and
11 Karmeishka because that's who was staying with me then, her and
12 Mr. Tindle, so I don't know.

13 **Q.** Well --

14 **A.** If she had came or what happened.

15 **Q.** Okay. Isn't it true that you had an argument at 98
16 Blythedale Avenue on May 11, 2015, and that argument with you
17 and Mr. Tindle turned physical?

18 **A.** If that's what it says, sir. Like I said, I don't
19 remember.

20 **Q.** Isn't it true --

21 **A.** I remember the last one in 2016, like I said.

22 **Q.** We'll get to that one next. I want to concentrate on
23 May 11, 2015.

24 So you agree with me that Mr. Ward was at your apartment
25 that day?

1 **A.** If that's what it says, sir.

2 **Q.** Okay. Do you agree that Ms. Edwards was there?

3 **A.** If that's what it says.

4 **Q.** Do you agree that Mr. Tindle was there?

5 **A.** If that's what it says.

6 **Q.** And that day, May 11, 2015, Mr. Tindle punched you in the
7 face; correct?

8 **A.** No.

9 **Q.** Following the punch in the face, you had a bloody lip;
10 correct?

11 **A.** No.

12 **Q.** Following the punch to the face, you had large, swollen
13 cheeks; correct?

14 **A.** Sir, no. And Mr. Tindle, if he did go to jail, he was
15 never charged with anything.

16 **Q.** We'll get to that.

17 After he, being Mr. Tindle, hit you, he said to you, "If
18 you call the police, I will kill you, bitch"; correct?

19 **MR. BURRIS:** Objection. It's argumentive.

20 **THE WITNESS:** Sir, I don't know.

21 **MR. BURRIS:** There is no foundation. There is no
22 proof that any of this happened.

23 **THE COURT:** Overruled. He has got a basis for asking
24 the questions, and she can tell us what her version of it is.

25 Ladies and Gentlemen, remember, an attorney's questions

1 are not evidence. All right?

2 Proceed.

3 **BY MR. MORIARTY:**

4 **Q.** I don't know if I got an answer to the last one, so let me
5 try it again, Ms. Turner.

6 On that day of May 11, 2015, after Mr. Tindle hit you, did
7 he say, "If you call the police, I will kill you, bitch"?

8 **A.** No.

9 **Q.** When the police -- well, you can agree that the police
10 arrived at the residence of 98 Blythedale on May 11, 2015;
11 right?

12 **A.** I'm guessing, sir. I don't remember.

13 **Q.** And when the police arrived, Mr. Tindle tried to escape
14 out the back door of the residence; correct?

15 **A.** I don't think so, no.

16 **Q.** The --

17 **A.** He never tried to run or anything. I just think he was
18 arrested.

19 **Q.** Okay. When -- you talked to the police that day, though;
20 correct?

21 **A.** With not wanting to, yeah.

22 **Q.** I'm sorry?

23 **A.** With not wanting to. I didn't have a choice.

24 **Q.** Right. The police responded to your house because your
25 uncle called the police. You didn't call the police, did you?

1 **A.** No.

2 **Q.** But nonetheless, the police responded and they talked to
3 you about the incident?

4 **A.** It was a big fight that day. My uncle had a swollen face,
5 too. There was a lot going on.

6 **Q.** Okay. But there was one person at the scene who was
7 treated by the medics and that was you; correct?

8 **A.** Yes -- no. Actually, no medics came.

9 **Q.** Okay. Do you remember an ambulance coming and checking
10 you out?

11 **A.** Nobody came to check me out. They arrested him, and that
12 was it.

13 **Q.** Photographs were taken of your face; correct?

14 **A.** No. I don't think so. No ambulance came.

15 **Q.** Okay. During that --

16 **A.** They also took photographs of the same uncle you're
17 talking about.

18 **Q.** Okay.

19 **A.** Who was involved in a fight also.

20 **MR. MORIARTY:** Your Honor, I'm going to have to have a
21 report marked as the next in line.

22 **THE CLERK:** 107.

23 (Trial Exhibit 107 marked for identification)

24 **MR. MORIARTY:** Can I approach the witness, Your Honor?

25 **THE COURT:** You may.

1 **BY MR. MORIARTY:**

2 **Q.** Ms. Turner, I'm -- sorry.

3 For the record, I've handed Ms. Turner Exhibit 107, which
4 is San Francisco Police Department Report 150409849.

5 Ms. Turner, if you could turn to page 4 of 5 in that
6 report. The pages are numbered at the bottom.

7 **A.** I've turned to it.

8 **Q.** Okay. I'm going to refer you to a few areas in the
9 report. Okay?

10 **THE COURT:** Do we have a question, Mr. Moriarty?

11 **MR. MORIARTY:** I'm sorry, Your Honor. Sorry.

12 **Q.** Could you turn to the -- thank you, Your Honor -- page 5,
13 which is the next page. On the -- do you see the second
14 paragraph? If you could read the second -- the first -- the
15 first sentence of the second paragraph to yourself, and then
16 I'm going to ask you a question.

17 **A.** Yeah. I read it.

18 **Q.** Okay. When it's stated that you were interviewed after
19 your medical assessment by medics at the scene, do you now
20 remember that you were assessed by medical staff at the scene
21 after this incident happened and the police arrived?

22 **A.** I don't remember no medics being there, just the police.

23 **Q.** Also in that paragraph in the middle of it, there's a
24 reference to your fresh injuries that included swelling to your
25 right cheek and fresh blood on your lip. Do you remember those

1 injuries being sustained in this incident?

2 **A.** If that's what it says, but, no. I'm pretty sure they
3 would have took action.

4 **Q.** Well, they did take action because Mr.--

5 **MR. BURRIS:** Objection. That's argumentive.

6 **THE COURT:** Sustained as to the form.

7 **MR. MORIARTY:** Okay.

8 **Q.** Mr. Tindle was arrested; correct?

9 **A.** Yeah. But they didn't have enough evidence to go further
10 with anything, I'm guessing.

11 **Q.** Can you turn back to page 4, which is the page before the
12 one we were referring to.

13 **A.** Which is what?

14 **Q.** Page 4, the third paragraph from the bottom. Do you see
15 where it says, "Tindle then yelled, 'if you call the police,
16 I'll kill you, bitch'," in the third paragraph from the bottom?

17 **A.** Yeah. I see that.

18 **Q.** Is it --

19 **A.** Now I found it.

20 **Q.** Yeah. Is it your testimony that he did not say those
21 words?

22 **A.** Yes.

23 **Q.** On this day, were you afraid of Mr. Tindle?

24 **A.** No. But the same person that called the police on him is
25 the same person I had already went to jail for fighting so she

1 never liked myself or Mr. Tindle. Just to say that that person
2 caused a lot of damage.

3 Q. Pardon me?

4 A. She caused a lot of damage. I went to jail for fighting
5 her also.

6 Q. That's Ms. Edwards?

7 A. Yes.

8 Q. So it's your testimony you were fighting with Ms. Edwards
9 on the day of the incident?

10 A. We have fought that day and other times. That's recorded,
11 too, but I'm pretty sure you don't have that. And that's when
12 I was pregnant also.

13 Q. Could you turn --

14 A. You just have the time where when she called, we were all
15 yelling at each other and stuff so...

16 Q. So Mr. Tindle should not have been arrested this day
17 because he didn't touch you?

18 A. No. My uncle had bruises and stuff, too.

19 Q. Do you see in that report there is any reference to anyone
20 else having --

21 A. The call wasn't on him. It was on me but a lot had went
22 on that day. That's what I'm saying.

23 Q. Okay. But you told the police that day that, according to
24 the report, "I constantly" -- you said, "I can't send him to
25 jail," referring to Mr. Tindle; correct?

1 **A.** No.

2 **Q.** That didn't happen either?

3 **A.** No. I never said I can't send him to jail.

4 **Q.** Do you have any idea why that would be in the report if --

5 **MR. BURRIS:** Objection. Argumentive. Calls for --

6 **THE WITNESS:** You have to ask the person who did the
7 report, sir. I don't know.

8 **MR. BURRIS:** Calls for speculation.

9 **THE COURT:** It does call for speculation as to the
10 form. Sustained.

11 Would you like to approach?

12 **MR. MORIARTY:** Sorry, Your Honor. Let me try it
13 again.

14 Your Honor, can I get 107 back?

15 **THE COURT:** Yes, you can.

16 **MR. MORIARTY:** Thanks.

17 **Q.** Now, on Thursday, you testified about an incident between
18 you and Mr. Tindle that happened in 2016, and I'll describe
19 that incident -- excuse me. You described it as an incident
20 where a jacket got torn. Do you remember that?

21 **A.** Yeah.

22 **Q.** And that was on the street?

23 **A.** Uh-huh.

24 **Q.** Is that a "yes"?

25 **A.** Yes.

1 Q. And on Thursday, you testified that it was nothing
2 physical --

3 A. Yeah. No.

4 Q. And that you and -- you and Mr. Tindle were just
5 tugging --

6 A. Tug-a-war with the coat.

7 Q. Okay. And that you had your son with you at the time;
8 correct?

9 A. Yeah.

10 Q. And that incident happened on September 21, 2016. Does
11 that sound right?

12 A. I just know it was in 2016.

13 Q. Okay. And at that time, you were living in Sausalito;
14 correct?

15 A. Yeah.

16 Q. You had moved from the location of 98 Blythedale into
17 Sausalito; correct?

18 A. Yeah.

19 Q. At the time of this incident on the street, Mr. Tindle
20 still lived at the 98 Blythedale residence; correct?

21 A. Well, I still had both places. I lived there, too. I
22 just was trying to get things right for the one in Sausalito.
23 Then I end up not keeping it at all, so...

24 Q. During the September 21, 2016, incident, you were
25 interviewed by the police; correct?

1 **A.** Yeah. I think so.

2 **Q.** During that interview, you told the police that you and
3 Mr. Tindle had a dating relationship and had been cohabitants
4 from time to time; correct?

5 **A.** No. He stayed there. I stayed there. The children
6 stayed there.

7 **Q.** Well, the day that this incident occurred because you were
8 upset --

9 **A.** I wasn't going there, but I still lived at 98 Blythedale.

10 **Q.** Okay. On the day of this incident, you got upset because
11 you saw your son walking with Mr. Tindle; correct?

12 **A.** Well, he was about to walk with him, and I didn't want him
13 to, and I wanted my jacket, so just turned into something that
14 it shouldn't have. I got real mad and chased him up the
15 street.

16 **Q.** You told the jury on Thursday that nothing got physical;
17 correct?

18 **A.** Not with us, but our jacket.

19 **Q.** Isn't it true that you told the police during that
20 argument that it did turn physical and he pushed you into a
21 building?

22 **A.** We weren't by a building. We were just on the sidewalk.

23 **Q.** Then he ripped the jacket off you. We've discussed that;
24 correct?

25 **A.** The jacket was never on me. It was in my hand. And we

1 were playing tug-a-war with the jacket.

2 Q. The argument was about young Sahleem; correct?

3 A. Yeah. He wanted to go with his dad, and I didn't want him
4 to.

5 Q. Pardon me?

6 A. He wanted to go with his father, and I didn't want him to.

7 Q. And you told the police when they arrived that that upset
8 you because you didn't give Mr. Tindle permission to be with
9 young Sahleem because you had physical custody of your
10 children; correct?

11 A. No. We both had custody. He could be with his father. I
12 never -- I don't have nothing saying I have sole custody or
13 anything.

14 Q. During the incident on the street, you testified on
15 Thursday that a good Samaritan called the police; correct?

16 A. Yeah. A lady seen me chasing him.

17 Q. That was just a stranger; correct?

18 A. Yeah. I didn't know her.

19 Q. But it was a lady?

20 A. (Witness nods head.)

21 Q. Is that a "yes"?

22 A. Yes.

23 Q. And that lady had seen the interaction between you and
24 Mr. Tindle on the street; correct?

25 MR. BURRIS: Objection. Calls for speculation.

1 **THE WITNESS:** No.

2 **THE COURT:** Sustained.

3 **MR. BURRIS:** No foundation.

4 **THE COURT:** Sustained. She can't know what someone
5 else saw.

6 **BY MR. MORIARTY:**

7 **Q.** Okay. You told us on Thursday a good Samaritan called the
8 police; correct?

9 **A.** I'm guessing she seen me chasing him. I don't know if she
10 called the police, yeah, for them. I don't know.

11 **Q.** Let's talk about it. There was a lady who saw this
12 interaction between --

13 **A.** The lady who saw me chasing him up the street.

14 **Q.** Okay. And you later saw that lady talking to the police;
15 correct?

16 **A.** Yes. I think so.

17 **Q.** Right. And at the time the police were talking to you
18 about the incident; correct?

19 **A.** I don't remember.

20 **Q.** Did the police --

21 **A.** When she called or when she got right there, I just saw
22 she was yelling when she seen me chasing him. I don't know.

23 **Q.** Before you started to chase Mr. Tindle, he had ripped your
24 jacket; right?

25 **A.** Yeah. We ripped it.

1 Q. Pardon me?

2 A. We ripped it.

3 Q. Okay. And he had taken two cell phones and some of your
4 cash; correct?

5 A. The cash and my phone was in my coat.

6 Q. Did those items go with Mr. Tindle when he ran away?

7 A. The coat ripped and the stuff was still in the jacket, but
8 he didn't run with the jacket. I already had my jacket back,
9 but I wanted him to come back, basically. I was chasing him.
10 I was already mad, and it just turned into something it didn't
11 have to be.

12 Q. When he ran away, he ran away with your son; correct?

13 A. I had my son and I was chasing -- chasing him. When the
14 police came right there, I had my son. He was by me.

15 Q. Because Mr. Tindle had left your son in traffic after he
16 ran from the police; correct?

17 A. We were all almost in the middle of the street. Everybody
18 was running. I had my son running with me, and Mr. Tindle was
19 up. When the police got to Mr. Tindle, we were already in the
20 street like on the sidewalk.

21 Q. When you --

22 A. I had him. When we were running, I had my son. The lady
23 that seen it flagged the police down or called them because she
24 seen two adults running with a child.

25 Q. We could agree that when the police came, you refused to

1 cooperate with them; correct?

2 **A.** I cooperated if I was talking to them, so I'm not going to
3 say correct.

4 **Q.** All right. And when you talked to the police, you told
5 them that there had been no prior incidents of domestic
6 violence?

7 **A.** They didn't ask that.

8 **Q.** They didn't?

9 **A.** They asked was I okay and what happened, not has there
10 been domestic violence before.

11 **Q.** Did the officers take photos of you that day?

12 **A.** No.

13 **Q.** Did they take photos of your cell phone and the cash that
14 were recovered from Mr. Tindle?

15 **A.** I don't think so. They were outside on the sidewalk so I
16 don't remember them taking pictures in a busy street.

17 **Q.** Ms. Turner, I asked you some questions on Thursday about
18 the case in which Mr. Tindle was arrested in San Francisco and
19 found guilty of an assault with great bodily injury. Do you
20 remember those questions?

21 **A.** Yes. I think so.

22 **Q.** On a prior occasion, you've testified about those
23 incidents; correct?

24 **A.** I don't know.

25 **Q.** I previously have asked you some questions about those

1 incidents, and I want to just be very clear here.

2 **THE COURT:** What's your question, Mr. Moriarty?

3 **MR. MORIARTY:** I'm getting to it, Your Honor.

4 **THE COURT:** Okay.

5 **MR. MORIARTY:** I'm getting do it.

6 **Q.** Isn't it true that on a prior occasion, you've testified
7 that the incident in San Francisco in which --

8 **MR. BURRIS:** Counsel, do you have a page and line
9 number?

10 **MR. MORIARTY:** Sure. It's from the prior testimony.
11 It's page 1119, line 23, to 1120, line 12.

12 **Q.** On a prior occasion, you've testified that you knew that
13 Mr. Tindle was convicted in San Francisco of assault with --
14 causing great bodily injury; isn't that correct?

15 **A.** I had said I don't know if he was found guilty for it, but
16 I know he was arrested for something like that.

17 **Q.** Well, let me simplify it. You knew he was arrested for
18 what we described as the Muni incident; correct?

19 **A.** For the what? Muni? Yeah.

20 **Q.** For the incident that happened on Muni. And you've
21 testified before that after that arrest, he was incarcerated in
22 San Francisco; right?

23 **A.** Yes.

24 **Q.** And there was a jury trial about that incident; right?

25 **A.** Yes.

1 Q. And after the jury trial, he went to prison; correct?

2 A. Correct.

3 Q. But you're not positive if he was convicted. That's the
4 testimony.

5 A. Of great bodily harm, yeah.

6 Q. Okay. And so previously the following questions and
7 answers were asked, and I will make it more simple. 1120, line
8 4, to line 12:

9 "Q. And so you had an understanding of what led him to
10 prison; correct?

11 "A. I believe so, yes.

12 "Q. Okay. And that was a case in which he was arrested
13 for robbery and assault; correct?

14 "A. Yes.

15 "Q. And that took place in San Francisco?

16 "A. Yes."

17 And I would next go to page 1122, line 8, through 14:

18 "Q. And you understood that he exercised his right to a
19 jury trial in those criminal charges; correct?

20 "A. Yes.

21 "Q. Did you attend the jury trial?

22 "A. Yes.

23 "Q. You were there when the jury convicted him?

24 "A. Yes."

25 You testified on Thursday that you weren't sure if

1 Mr. Tindle was found guilty of a prior gun charge; correct?

2 **A.** Correct.

3 **Q.** And I'd refer the Court and counsel to 1125, line 22, to
4 1126, line 7:

5 "Q. And after Mr. Tindle got out of San Quentin, you
6 learned that he picked up a federal gun case; correct?

7 "A. Yes. I think so. Right.

8 "Q. Right. That was in San Francisco; correct?

9 "A. Correct.

10 "Q. And he was convicted of illegally possessing a firearm
11 because he was a convicted felon; correct?

12 "A. Correct."

13 **MR. BURRIS:** Your Honor, in the interests of
14 completeness, I would ask that the next two lines be read.

15 **THE COURT:** He is, Mr. Burris.

16 **MR. BURRIS:** I'm sorry. In the interests of
17 completion --

18 **THE COURT:** No. Mr. Burris, he said through 7, I
19 thought.

20 **MR. MORIARTY:** And I'm not done.

21 **THE COURT:** He's not done yet.

22 **MR. MORIARTY:** Continuing:

23 "Q. Does it make sense, the timing of that incident, to be
24 in September of 2009?

25 "A. Yes."

1 Q. You have previously testified, Ms. Turner, that you had
2 seen Mr. Tindle with a gun that he took from someone in
3 San Francisco in July of 2017; correct?

4 A. I gave the same scenario of which the fight was --
5 happened -- long story short, the police gave a lot of
6 scenarios, and it got to the point where I started agreeing and
7 making up stuff as I went, hoping I would be able to just go
8 after that.

9 Q. So when you told that -- you agree that you told that to
10 the police, that he had a gun in July --

11 A. I think I pointed to the picture they had. I don't know.

12 Q. Let me just end it here. I want to be precise.

13 You told the police he had a gun in July of 2017 that he
14 took off someone in San Francisco. You said that; correct?

15 A. I think. I don't -- I said a lot of stuff.

16 Q. But your testimony today is while you said it, you were
17 making it up? It wasn't true?

18 A. Basically.

19 Q. Okay. I want to refocus ourselves on the day of the
20 incident. Okay?

21 A. Yes.

22 Q. Your testimony is that you never saw Mr. Tindle with a gun
23 on January 3, 2018; correct?

24 A. Correct.

25 Q. Never saw it in either of his hands; correct?

1 **A.** Correct.

2 **Q.** Never saw it in the jeans that he was wearing; correct?

3 **A.** Correct.

4 **Q.** And your testimony is that you wouldn't have any idea why
5 he would have been carrying a gun if, in fact, he was carrying
6 a gun that day?

7 **A.** Yes.

8 **Q.** Your testimony is that Mr. Truck Evans -- excuse me --
9 Demorea Evans never became involved in the argument between you
10 and -- excuse me -- among you, Mr. Tindle, and -- Mr. Tindle
11 and Mr. Newton; is that correct?

12 **A.** Sir, I was yelling myself, so I don't know what
13 Mr. Demorea Evans yelled out or if he did or didn't.

14 **Q.** So --

15 **A.** That's what I basically was saying. I don't know.

16 **Q.** Okay. But you were definitely involved in the argument
17 among Tindle, Newton, and yourself; correct?

18 **A.** It was an argument, yeah.

19 **Q.** And when Mr. Evans has testified that you were very upset,
20 you agree with that; correct?

21 **A.** More so confused than upset.

22 **Q.** Mr. Evans has testified that during the argument,
23 Mr. Tindle --

24 **MR. BURRIS:** Objection. There is no evidence that
25 Mr. Evans has testified to anything in this Court. No

1 foundation for the question.

2 **THE COURT:** Well, that's true.

3 **MR. MORIARTY:** Okay.

4 **Q.** On January 3, 2018, did Mr. Tindle ever say to Mr. Newton,
5 "I should clap your ass"?

6 **A.** No.

7 **Q.** You know what that phrase means, though; correct?

8 **A.** To fight or shoot somebody.

9 **Q.** Had you ever heard Mr. Tindle use that phrase before?

10 **A.** No.

11 **Q.** During the argument among you, Tindle, and Newton, isn't
12 it true that you were encouraging Mr. Tindle?

13 **A.** No. I didn't even know there was going to be a fight.

14 Mr. Newton tackled him. Sahleem didn't know there was going to
15 be a fight. And if Mr. Evans can testify to anything, he can
16 testify that Sahleem Tindle never walking around Oakland trying
17 to fight anybody. He was always with his children any time
18 Mr. Evans seen him. I know he can testify to that.

19 **MR. MORIARTY:** Motion to strike, Your Honor. There is
20 no question pending.

21 **THE COURT:** Sustained. That entire last piece is
22 stricken, Ladies and Gentlemen. As I indicated before, she
23 can't know what's in someone else's head. She can't testify as
24 to what Mr. Evans thought or saw.

25

1 **BY MR. MORIARTY:**

2 **Q.** The initial argument among you --

3 **A.** I said saw, not thought. Any time he seen Shaleem --

4 **THE COURT:** Ms. Turner, you do need to wait for a
5 question. The testimony is stricken. All right.

6 **BY MR. MORIARTY:**

7 **Q.** Isn't it true, Ms. Turner, that after the initial argument
8 among the three of you, you and Mr. Tindle walked towards the
9 BART station?

10 **A.** We were in the street, yeah, trying to finish going to
11 BART.

12 **Q.** During that walk towards the BART station, you and
13 Mr. Tindle kept talking about that incident with Mr. Newton;
14 correct?

15 **A.** I don't get the question.

16 **Q.** Right.

17 The initial argument in front of Upper Kutz ends, and you
18 and Mr. Tindle start walking towards the BART station --

19 **A.** The argument never ended because they were -- we were all
20 still talking smack to each other.

21 **Q.** Did you and Mr. Tindle physically walk away from --

22 **A.** Well, yeah. And when Mr. Evans -- I mean, Mr. Newton was
23 threatening to come to where we stayed, the argument continued.
24 We walked back towards the -- where Mr. Newton was. I don't
25 remember Mr. Newton going into a barber shop. I don't remember

1 that ever happening. Or Mr. Evans stopping Mr. Newton and
2 holding him back, that never happened.

3 **Q.** Okay. Let's just go question and answer. All right.

4 Do we agree that after the initial -- well, let me
5 withdraw that.

6 During the initial argument, there was nothing physical
7 between Mr. Tindle and Mr. Newton; correct?

8 **A.** No.

9 **Q.** No one put their hands on each other?

10 **A.** It was never going to get physical until Mr. Newton rushed
11 Tindle.

12 **Q.** Right. Okay.

13 And after that initial argument, you and Mr. Tindle walked
14 over towards the BART station; correct?

15 **A.** Yeah. We were trying to finish going to BART.

16 **Q.** Right. And you were still upset; correct?

17 **A.** We were still all arguing.

18 **Q.** And then --

19 **A.** It was never upset to where I was going to try and fight
20 this man. We were never going to fight. Mr. Newton did that.

21 **Q.** Nonetheless, instead of going to BART, you and Mr. Tindle
22 returned to Upper Kutz; correct?

23 **MR. BURRIS:** Objection. "Nonetheless" is argument.

24 **THE WITNESS:** No.

25 **THE COURT:** Overruled.

1 **BY MR. MORIARTY:**

2 **Q.** That's where the shooting took place, right, in front of
3 Upper Kutz?

4 **A.** I don't know if it was in front of Upper Kutz or the
5 tacorea. The fight was by the tacorea, and they ended up by
6 Upper Kutz. They fought all right there, so I couldn't tell
7 you where the shooting took place. I didn't see it. I just
8 heard it.

9 **Q.** Okay. When the two of you decided to return to either in
10 front of the tacorea or Upper Kutz, isn't it true that Mr.--

11 **MR. BURRIS:** Objection, Your Honor. There is no
12 foundation for them to return. She said we never left. We
13 continued. It's a misstatement of testimony. It's
14 argumentative.

15 **THE COURT:** Overruled. The jury's memory of what the
16 testimony is with respect to where they were, where they went
17 and when -- if at all they came back, that's your decision.

18 But go ahead, given this interplay, and state your
19 question again.

20 **MR. MORIARTY:** Thank you.

21 **Q.** Before the shooting took place, isn't it true Mr. Evans
22 told Mr. Tindle, "It ain't worth it"?

23 **A.** I don't know what Mr. Evans was saying. I was talking
24 myself. I don't know.

25 **Q.** Isn't it true that Mr. Evans tried to end this argument

1 between Mr. Tindle and Mr. Newton?

2 **A.** No.

3 **Q.** Is it your testimony that Mr. Evans was never involved in
4 this argument --

5 **A.** Mr. Evans was probably yelling, but I wouldn't know what
6 Mr. Evans said. I was yelling myself. Mr. Evans never came in
7 the middle and tried to stop anything. Mr. Evans was in his
8 shop, from what I could see.

9 **Q.** He was inside the shop?

10 **A.** In the doorway, I'm guessing, when they were fighting or
11 probably behind the wall, like you said.

12 **Q.** The fight between Mr. Tindle and Mr. Newton took place on
13 the sidewalk; correct?

14 **A.** Correct.

15 **Q.** During the fight, you heard loud noises that you later
16 realized were gunshots; correct?

17 **A.** Yeah. Because it was already the -- what is -- that New
18 Year's stuff had already happened, so I didn't know if it was a
19 shot or firecracker. Then I realized after the fact it was a
20 shot because I never seen Mr. Newton hurt or -- I don't know.
21 They just fought. So it didn't look like anybody was shooting.

22 **Q.** So when you initially heard the first loud bang, you were
23 not sure if it was a gunshot or a firework or just some other
24 noise --

25 **A.** They were doing fireworks all week, people in Oakland,

1 period.

2 Q. Where were you standing when the fight occurred?

3 Excuse me. Where were you standing when the fight
4 occurred on the sidewalk?

5 A. When the fight first happened, I don't know if I was on
6 the curb or in the street. I don't know. The fight started
7 from the tacorea and ended up by Upper Kutz at the end, so I
8 can't tell you where I was standing at this part, that part. I
9 don't know. I just know I was right there.

10 Q. Your testimony is that you never saw anyone with a gun;
11 correct?

12 A. Correct.

13 Q. Your testimony is that you never saw anyone shoot a gun;
14 correct?

15 A. Correct.

16 Q. Your testimony is you never saw the fire come out of a gun
17 that anyone was holding?

18 A. Correct. I never seen nothing light up or I didn't even
19 see the other man hurt. I didn't see any of that. I just seen
20 a fight.

21 Q. Your testimony is that you never saw a gun fall to the
22 ground and go off; correct?

23 A. Correct.

24 Q. You never --

25 A. From where I was standing, I didn't see any of that.

1 Q. You never saw a gun six seconds later fall to the ground
2 and go off; correct?

3 A. Correct.

4 Q. You never -- after the first loud noise, you never heard
5 anyone say something to the effect of, "Oh, shoot, the gun went
6 off"; correct?

7 A. I don't know. I know it was a lot of stuff going on.
8 People running this way, that way. I was running to make sure
9 my children didn't see anything. I don't know where they were
10 standing at the time.

11 Q. After the first --

12 A. Even after that, I never seen anyone hurt, so I didn't
13 think anyone was shot.

14 Q. I want to focus on what you heard because you said that
15 you heard a loud bang?

16 A. Yeah.

17 Q. And then seconds later, you heard another loud bang;
18 correct?

19 MR. BURRIS: Objection. That's a misstatement of the
20 testimony. She didn't say that at all.

21 THE COURT: Overruled.

22 THE WITNESS: Yeah. I don't think I said that. I
23 think I said I heard a bang because I thought it was only one
24 shot.

25

1 **BY MR. MORIARTY:**

2 **Q.** All right. When you heard that loud bang, did you hear
3 anyone say anything to the effect of that was an accident?

4 **A.** No. I seen a fight going on.

5 **Q.** You didn't hear anyone yell anything out after that loud
6 noise, did you?

7 **A.** No.

8 **Q.** You saw Mr. Tindle shoot Mr. Newton in the leg; correct?

9 **A.** No.

10 **Q.** You saw Mr. Tindle shoot one time into the barber shop;
11 correct?

12 **A.** No.

13 **Q.** You were -- you remained at the scene after the shooting;
14 correct?

15 **A.** I remained at the scene.

16 **MR. BURRIS:** Objection. Objection. Vagueness. What
17 shooting are you talking about? It's vague as to --

18 **THE WITNESS:** It's two different --

19 **MR. BURRIS:** -- as to time and place.

20 **THE COURT:** Overruled. Well --

21 **MR. MORIARTY:** I'll clear it up, Your Honor.

22 **THE COURT:** Sustained.

23 **BY MR. MORIARTY:**

24 **Q.** After Mr. Tindle was shot, you saw that Mr. Newton was
25 also shot; correct?

1 **A.** I never seen that. Once Mr. Tindle was shot, I was only
2 there for about 30 seconds, close to a minute. I thought he
3 was still -- I thought he was still alive so I was trying to
4 make sure my children didn't see it, and I ran upstairs to
5 BART. That's why, after he was shot, I never come back right
6 there. I didn't get a chance to.

7 So, no, I didn't see all that. I ran upstairs to BART,
8 rolled around on the floor to make -- to find my children
9 because they weren't still standing in that same place from
10 where the officer was running. So, no, I did not stay at the
11 scene when he was shot. That's why the whole time in question,
12 I thought he was still alive. I never got to go back by his
13 body or anything. I never seen Mr. Newton go in the ambulance.
14 I didn't see anything.

15 **Q.** At the time of the -- could we get -- can I approach,
16 Your Honor?

17 **THE COURT:** You may.

18 **MR. MORIARTY:** Can I proceed, Your Honor?

19 **Q.** Are you okay?

20 Ms. Turner, on Thursday, you testified that you sent your
21 children to the BART station before the fighting, the physical
22 fighting between Mr. Tindle and Mr. Newton began; correct?

23 **A.** I told them to go -- go ahead with my sister. I didn't
24 say go in the BART. Just go ahead because I didn't know a
25 fight was about to happen. I just didn't want them to see

1 their dad arguing with that man.

2 **Q.** On a prior occasion, you testified -- and I'd refer the
3 Court and counsel to page 1106, line 3 through 11 -- that your
4 children were watching the fight between --

5 **THE COURT:** Hold on.

6 **MR. MORIARTY:** Oh, I'm sorry.

7 **MR. BURRIS:** You said 1106, counsel?

8 **MR. MORIARTY:** Yes. 1106, line 3 to 12 -- 3 to 11, I
9 should say.

10 **THE COURT:** All right. Go ahead.

11 **BY MR. MORIARTY:**

12 **Q.** You testified on a prior occasion that your children were
13 basically right there when the fighting began.

14 **A.** No. When the argument began, they were right there. He
15 walked up to my children.

16 **Q.** Okay.

17 **A.** Their dad and my sister.

18 **Q.** I will read from 1106, 3 to 11. Answer --

19 **THE COURT:** Hold on. I don't think that's appropriate
20 impeachment. She testified that they were fight -- that she
21 didn't want them to see when they were fighting.

22 **MR. MORIARTY:** Right. Where I started, Your Honor, I
23 said on Thursday she testified that she sent her kids to the
24 BART station before the fighting began. And so line --

25 **THE COURT:** Okay. Let me read it.

1 **MR. MORIARTY:** -- 1106, 1 through 6, would be
2 inconsistent with that statement.

3 **THE COURT:** Let me see.

4 (the Court reads the testimony.)

5 **THE COURT:** All right. Go ahead.

6 **BY MR. MORIARTY:**

7 **Q.** Line 1106, 1 through 11:

8 "Q. So then what happened after you were arguing back and
9 forth?

10 "A. Well, we were arguing, and then my -- I was kind of in
11 the middle of the street, so basically when I was walking off,
12 Sahleem and the man started fighting -- the man start fighting,
13 and I didn't want my children to see, so basically in the
14 middle of the street, trying to tell 'go'. You know, I didn't
15 want them to -- I didn't want them to see their father
16 fighting.

17 "Q. Who were you telling 'go, go' --

18 **A.** I was trying to yell across the street to my sister and
19 children, but I never saw where they went --

20 **THE COURT:** Ms. Turner, hold on. Let him finish
21 reading please.

22 **MR. MORIARTY:** Question from line 9:

23 "Q. Who are you telling to 'go, go'?

24 "A. My sister and my children because I didn't want them
25 standing there looking at a fight with their father."

1 Q. So your testimony today is what, Ms. Turner, as far as
2 where your children were when the physical fight between
3 Mr. Tindle and Mr. Newton began?

4 A. That's the thing. I never knew where they were. I was
5 trying to look and yell, make sure they weren't right there.
6 That's why after he got shot, I ran upstairs to see if they
7 were up there because they weren't in the parking lot. They
8 weren't downstairs. They were upstairs. I never knew where
9 they were. I didn't even know if they seen him get shot. So I
10 was already in the street by the time the officer came trying
11 to make sure my children didn't see that. I didn't know where
12 they went or my sister.

13 Q. On Thursday, you testified that you were yelling at them,
14 at your children --

15 A. I was yelling, but I don't know where she was.

16 Q. Okay. But you testified on Thursday that you were yelling
17 at your children when my client, Officer Mateu, was running
18 towards you.

19 A. No. I was yelling, "His children are right there." I
20 thought my children was still by the parking lot, which my
21 sister first crossed the street. I never knew where they were,
22 ever, until after he was shot.

23 Q. And on Thursday, you testified that you were afraid that
24 they were going to get shot; correct? When Officer --

25 A. I don't know if they were going to get shot. I didn't

1 want them to see the shot, but I thought I would have been
2 getting shot if I made another sudden step, so I probably did
3 say that.

4 **Q.** You've previously testified that you were in the middle of
5 the street when the fighting took place; correct?

6 **A.** I was in the street. I can't say if I was in the far
7 middle. I just know I wasn't right there when he got rushed.

8 **Q.** Okay. And then on Thursday, you testified that you were
9 on the curb or on the sidewalk when the fighting occurred. Do
10 you remember that?

11 **A.** Probably. I was everywhere that day. The fighting --
12 like I said, it was a whole block, and the fight didn't start
13 at Upper Kutz. It started at the tacorea.

14 **Q.** Where were you located when the physical fight began?

15 **A.** I'm thinking on the street or on the curb. I don't know.

16 **Q.** Okay.

17 **A.** I just know I was right there, a few feet away. Like I
18 said in the police interview, I literally pointed a whole
19 different street of where I was really standing. That's how
20 confused I was by it all.

21 **MR. MORIARTY:** I refer the Court and counsel to page
22 1106, lines 20 to 24:

23 "A. They were still fighting" --

24 **MR. BURRIS:** Huh-uh, counsel. You should read the
25 question first. 17 starts --

1 **THE COURT:** I agree. Question first. Tell me when
2 you're done.

3 **MR. BURRIS:** I'm fine. Thank you.

4 **MR. MORIARTY:** I will go from 17 to 24.

5 "Q. So what happened after you told your children to go
6 and Sahleem or Mr. Tindle and this guy are fighting? What
7 happened next?

8 "A. They were still fighting. I was basically in the
9 middle of the street trying to make sure my children were out
10 of the way and trying to keep my eyes on the fight, and that's
11 basically when I heard the bang. I thought it was one shot,
12 but I guess it was two."

13 **Q.** So I'm not going to go through all the prior testimony. I
14 just want to know what your testimony is today, Ms. Turner.

15 When the fight --

16 **MR. BURRIS:** Objection. Argumentative.

17 **THE COURT:** Sustained as to the form.

18 **BY MR. MORIARTY:**

19 **Q.** When the fighting and the shot took place, where were you
20 standing?

21 **MR. BURRIS:** Objection. Asked and answered.

22 **THE COURT:** Overruled.

23 **MR. BURRIS:** Objection, Your Honor. It's which shot?
24 The one shot or the two, three from the cops? Foundation.

25 **THE COURT:** Sustained as to --

1 **MR. MORIARTY:** I agree.

2 **THE COURT:** Slightly ambiguous. Not as to foundation.

3 **MR. MORIARTY:** I agree.

4 **Q.** When the fighting between Mr. Tindle and Mr. Newman *[sic]*
5 was taking place, you testified you heard a loud bang; correct?

6 **A.** Yeah.

7 **Q.** I'm not talking about the three shots from Officer Mateu.
8 Okay?

9 **A.** Uh-huh.

10 **Q.** Do you understand where I'm going?

11 **A.** Yes.

12 **Q.** And during the time that you were watching the fighting
13 and you heard that initial loud bang, where were you physically
14 located?

15 **A.** In the street. Nobody was on the sidewalk when the loud
16 bang happened but the two people fighting.

17 **Q.** Ms. Turner, is the monitor in front of you working?

18 **A.** Yes.

19 **Q.** And do you see -- just for the record, Your Honor, I have
20 in the video the incident which is Bates stamped 0096.

21 Ms. Turner, do you see the counter in the left bottom
22 corner of the screen where it says 0:03:00?

23 **A.** Yeah.

24 **Q.** I'm going to play a portion and then I'm going to stop.

25 Okay? I'm going to play 12 seconds and then stop the video.

1 All right?

2 A. Yeah.

3 Q. And then I'll ask you a question.

4 (Whereupon, the video was played.)

5 BY MR. MORIARTY:

6 Q. Now, I have stopped it at the mark where it says 3 minutes
7 and 12 seconds. Okay?

8 A. Yes.

9 Q. Do you see that? Do you see where the cursor is moving on
10 the screen?

11 A. Yes.

12 Q. Tell the jury who the lady I have the arrow over is.

13 A. My sister.

14 Q. To the right of your sister -- what's your sister's name?

15 A. Ardanna.

16 Q. She was the one that was walking with you --

17 A. That I told to go ahead, yes.

18 Q. And to the right of Ardanna, is that young Saleem *[sic]*?

19 A. Sahleem, yes.

20 Q. Young Sahleem.

21 And then in front of Ardanna is your daughter Sionye in
22 the stroller; correct?

23 A. Yes.

24 Q. I'm going to start it again from 3:12. Okay?

25 A. Yes.

(Whereupon, the video was played.)

BY MR. MORIARTY:

Q. I have stopped it at 3:49. Do you see that on your screen?

A. Yes.

Q. And do you see where the cursor is? Is that Upper Kutz, the barber shop?

A. Yes.

Q. And this, where the cursor is now, is the area where the fighting was taking place; correct?

A. Yes.

Q. And do you see on the -- what appears to be the curb line --

A. The curb, half of the sidewalk, that's me.

Q. That's you right there?

A. Yeah.

Q. I'm going to go ahead and press play at 3:49. Okay?

A. Yes.

(Whereupon, the video was played.)

BY MR. MORIARTY:

Q. And when I stopped at 3:54, do you see where I stopped it?

A. Yes.

Q. And the person whose running away that appears to be almost in the left-hand turn lane of 7th Street, that's you; correct?

1 **A.** Yes.

2 **Q.** You saw Officer Mateu running across the street; correct?

3 **A.** Yeah.

4 **Q.** He ran through the middle of 7th Street; correct?

5 **A.** Yes.

6 **Q.** He was sprinting?

7 **A.** Yes.

8 **Q.** He was wearing a uniform?

9 **A.** Yes.

10 **Q.** And you saw his uniform?

11 **A.** Yes.

12 **Q.** And you saw the gun that he held?

13 **A.** Of course.

14 **Q.** And you saw -- excuse me -- you heard him yelling
15 commands; correct?

16 **A.** Yes.

17 **Q.** And there was no question in your mind when you saw and
18 heard Mateu coming to the corner that he was a police officer;
19 correct?

20 **A.** Correct.

21 **Q.** Ms. Turner, can you see the photograph that's on the
22 screen right now?

23 **A.** Yes.

24 **Q.** And that, for the record, is 101A, Defense 101A. Do you
25 recognize that, what's shown in that photograph?

1 **A.** The Upper Kutz and the taco place.

2 **Q.** And is that the way the layout looked on January 3, 2018,
3 when this incident took place?

4 **A.** Yes.

5 **Q.** Okay. I want you to take a look at 101C, which is now on
6 the screen. Do you see Upper Kutz in that photograph?

7 **A.** Yes.

8 **Q.** Do you see -- do you see where my pen is?

9 **A.** Yes.

10 **Q.** Do you see what appears to be two people who are in a
11 physical fight?

12 **A.** Yes.

13 **Q.** And then -- and those people look like they're -- one's on
14 the ground and one's on top. Do you agree?

15 **A.** Yes.

16 **Q.** To the left of those two individuals is a person who is
17 standing. Do you see that?

18 **A.** Yes.

19 **Q.** Is that you?

20 **A.** Yes. They were fighting. I was right there.

21 **Q.** You were right there --

22 **A.** Yeah.

23 **Q.** -- correct?

24 **A.** Never said I wasn't. I just wasn't right there when the
25 shooting took place. I was up on the curb, off the curb, on

1 the other side. I was everywhere.

2 Q. But during this portion of this incident, it appears to me
3 that -- and you tell me your memory -- that you're within a
4 couple feet of this fight; correct?

5 A. Yes.

6 Q. And your testimony is that you never saw a firearm;
7 correct?

8 A. Correct. Just seen them fight.

9 Q. Now on the screen is 101D. Do you see that?

10 A. Yes.

11 Q. Can you tell if the area of the corner with Upper Kutz and
12 the taco shop is shown in this photograph?

13 A. Yes.

14 Q. Does it appear to be another photo that looks similar to
15 the prior one I saw you -- I showed you, I should say?

16 A. Yes.

17 Q. Can you distinguish at all if you can see anyone in the
18 area where I'm now pointing my pen on the corner of 7th and
19 Chester?

20 A. Yeah.

21 Q. Who do you see in that location?

22 A. I think that's me. The same spot. It's a different
23 angle.

24 Q. When you say "that's me" -- if I could approach,
25 Your Honor.

1 Am I correct -- do you see where my pen is pointing right
2 there?

3 **A.** Yeah.

4 **Q.** That's what you're talking about?

5 **A.** Okay.

6 **MR. MORIARTY:** Your Honor, could I approach the
7 witness with this exhibit?

8 **THE COURT:** All right.

9 **BY MR. MORIARTY:**

10 **Q.** Handing -- handing the witness 101D, and I also handed her
11 a red pen.

12 Ms. Turner, could you do me the favor of putting a circle
13 to correspond with your prior testimony of that being you in
14 the picture, and then after you draw a circle, could you pull a
15 line --

16 **MR. BURRIS:** Counsel, which exhibit is this?

17 **MR. MORIARTY:** D.

18 **THE COURT:** 101D.

19 **MR. BURRIS:** Thank you.

20 **BY MR. MORIARTY:**

21 **Q.** And after you draw the circle, could you pull a line into
22 the margin and put your initials with the number 1, please.

23 **A.** Circle it, a line. Okay. What's the margin or whatever
24 you said?

25 **Q.** The white part that's surrounding the picture.

1 **A.** Okay.

2 **Q.** You can just draw a line up. I think it will be clear.

3 **A.** I think I did it.

4 **Q.** And then if you put your initials and the number 1, is
5 that okay?

6 **A.** Yeah.

7 **MR. MORIARTY:** Can I take it from her now, Your Honor?

8 **THE COURT:** You may.

9 **BY MR. MORIARTY:**

10 **Q.** And the 101D is now back on the screen. Do you see that
11 now, Ms. Turner?

12 **A.** Yeah.

13 **Q.** And 101D, you put a circle around you at the location
14 where you were during this portion of the fight; correct?

15 **A.** Correct.

16 **Q.** And then above it, you put your initials CT; correct?

17 **A.** Yes.

18 **Q.** Were you ever afraid that you were going to get shot?

19 **A.** What did you say?

20 **Q.** Were you ever afraid that you were going to get shot?

21 **A.** When the officer was running right there, yeah, because
22 his gun was already pointed out, and I don't want to make
23 another sudden move and get shot, so I was trying to run.

24 **Q.** Were you ever afraid that you were going to get shot
25 before you saw the officer?

1 **A.** No.

2 **Q.** After you heard that loud noise, you stayed in the same
3 location; correct?

4 **A.** I was already, like, in the street, sidewalk, so I don't
5 know, but I was right there, yeah.

6 **Q.** Right.

7 **A.** And then when I seen the officer running towards me and
8 the two people fighting and the gun drawn, that's when I was
9 really trying to yell and say there's children right there, not
10 knowing where my babies were.

11 **Q.** Just to be clear, though, it wasn't until you saw the
12 officer that you ran from that corner of 7th and Chester;
13 correct?

14 **A.** Away from the fight. I was already on the corner when I
15 was in the middle of the street and on the curb and all that.
16 It was -- everything happened on the corner.

17 **Q.** Give me a second.

18 **A.** I didn't know anybody was shot, so I didn't run.

19 **MR. MORIARTY:** Can I have one second, Your Honor, to
20 consult Mr. Allen.

21 (Defense counsel confer off the record.)

22 **MR. MORIARTY:** That's all the questions I have,
23 Your Honor.

24 **THE COURT:** Redirect?

25 **MR. BURRIS:** Yes. Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. BURRIS:

Q. Ms. Turner, so you and Saleem [*sic*]-- Sahleem -- of the period of time from after the first child was born until the date of his death, how much time did you live together?

A. Probably about seven, eight years.

Q. Okay.

A. For a while.

Q. So would you --

A. Long time.

Q. -- describe the relationship in terms of there were ups and downs, there were emotional issues? What was involved?

A. There were ups and downs, but more so good times than bad. We were young. Jealousy. Yeah, you know, that kind of thing, so ... It was mostly good times.

Q. You were both in your early, mid 20s?

A. Yeah.

Q. Were there feelings of possession on the part of either one of you?

A. Me, myself.

Q. Okay. In terms of the issues around his convictions, those took place back in 2009 and 2010, '11, that period of time?

A. Yes.

Q. Were there any convictions after that?

1 **A.** No. And he got off of federal probation and the regular
2 probation. He got off of all those things.

3 **Q.** So there's -- counsel made reference to the fact that
4 there were domestic issues where the police was called on more
5 than one occasion?

6 **A.** Yeah.

7 **Q.** What impact, if any, did those events have in connection
8 with his relationship with the children?

9 **A.** None whatsoever.

10 **Q.** Okay. And in what sense? What was the relationship?

11 **A.** He had a wonder relationship with them. To this day, my
12 daughter asks for her father, and my son. He never miss a
13 field trip for my son and was always at school with them or
14 just spending time with them in class, took them to --

15 **Q.** So in terms of the relationship that you and he had, rocky
16 at times, what impact did it have on his providing love and
17 attention, all the kind of things that you made reference to?

18 **A.** None.

19 **Q.** Okay. He was a dedicated dad?

20 **A.** Yes.

21 **Q.** Okay. A participating dad?

22 **A.** Yes.

23 **Q.** Okay. Were there any issues of -- did you mention
24 something about child custody? Was there a custody issue
25 involved?

1 **A.** No. We didn't have a custody agreement. We just did what
2 parents do, took care of our children.

3 **Q.** So you didn't take him to court or any complaints about
4 him at all in relationship to the children?

5 **A.** No.

6 **Q.** And he did -- he did his share of what he could do?

7 **MR. MORIARTY:** Objection. Leading.

8 **THE COURT:** Sustained.

9 **BY MR. BURRIS:**

10 **Q.** Okay.

11 **A.** What he couldn't do with money, he did with time.

12 **THE COURT:** Sustained. He will ask you a new
13 question.

14 **BY MR. BURRIS:**

15 **Q.** You guys were not financially well off, I take it?

16 **A.** Correct.

17 **Q.** Now, what impact, if any, did this sort of money or lack
18 thereof have on his impact in being a dad?

19 **A.** None. What he didn't do with money, he did with time.

20 **Q.** Okay. Okay.

21 **A.** When he did not have money, he gave time.

22 **Q.** So -- okay.

23 Now, at the time of his passing, were you two living
24 together over on Willow Street?

25 **A.** Yes.

1 Q. Okay. And was he engaging in any way with his children
2 during that period of time?

3 A. Yes.

4 Q. In what way? Describe for us.

5 A. He would always take my son to karate or just go take him
6 to school, pick him up. If not going to movies, then just
7 being at home with them or them watching their favorite shows
8 together. He just was in his children's life.

9 Q. Okay. When you left out on the date of his death -- when
10 you left out from the home, what was his mood like, his
11 emotional mood, if you will?

12 A. He was happy. He had just made them lunch and got them
13 dressed, because I was doing my sister's hair, and we was just
14 about to leave after the fact. But he was happy. Fed them,
15 cleaned up, and we were just -- he was just waiting for me to
16 finish my sister's hair, but he was in a good mood.

17 Q. Was there any discussion that you heard where he was upset
18 with any particular one person?

19 A. No.

20 Q. Was there any discussion about Mr. Newton at all?

21 A. No.

22 Q. Did you know Mr. Newton prior to that day?

23 A. No.

24 Q. Okay. When he left out that day, his attitude was not --
25 what was his attitude?

1 **A.** It was just walking and talking, joking, just being his
2 normal self.

3 **Q.** Okay. You and he were sort of working through whatever
4 differences you had had --

5 **A.** Yeah.

6 **Q.** -- around jealousy?

7 **A.** Huh?

8 **Q.** Around jealousy and all?

9 **A.** Yeah.

10 **Q.** Okay. So in terms of the incident itself, counsel has
11 made a lot of references to your location -- first off, the
12 fight itself, getting to that, what was the initial contact
13 that you or he, Sahleem, had with Mr. Newton?

14 **A.** Mr. Newton came up to us and started yelling about his
15 stuff. We --

16 **Q.** Okay. And were you still on Chester Street when that
17 happened?

18 **A.** Yeah.

19 **Q.** Okay. Were you closer to 8th Street or closer to 7th
20 Street?

21 **A.** 8th.

22 **Q.** So this is further into the block?

23 **A.** Yeah.

24 **Q.** So in walking from 7th and Chester to 7th and Chester --

25 **A.** Yeah.

1 Q. -- was he with you during that period of time, "he"
2 meaning Mr. Newton?

3 A. Yes. He was following us down the street.

4 Q. Okay. And what was going on?

5 A. Arguing, and he had already came about this
6 close (indicating) --

7 Q. When you say "this close," you mean within a foot or two
8 or three --

9 A. Within an inch. If he was closer, he could have gave
10 somebody a kiss. He was that close.

11 Q. Was that to you or to Mr. Tindle?

12 A. To myself, the children -- to everybody. He came in
13 everybody face and was talking a lot of stuff.

14 Q. Okay.

15 A. And that was the whole point of me telling my sister to
16 please walk ahead. Never said go wait in the BART or anything
17 like that.

18 Q. So in walking along that street where he's sort of in your
19 face, if you will --

20 A. Yes.

21 Q. Okay. So at any point in time, did you leave the two of
22 them?

23 A. I'm kind of walking up ahead of them more.

24 Q. Okay.

25 A. Yeah.

1 Q. And what happened next after that?

2 A. And then what happened next, we got to -- it was still an
3 argument all the way to the corner.

4 Q. Okay.

5 A. So a whole block of arguing.

6 Q. Okay. And was threats being made during this time?

7 A. There was.

8 MR. MORIARTY: Objection. Leading. Leading.

9 THE COURT: Sustained.

10 BY MR. BURRIS:

11 Q. What was being said -- were you feeling uncomfortable
12 about what was going on?

13 A. Yes.

14 Q. What was Mr. Newton saying?

15 A. He's a real Oakland -- the N word. A real Oakland. He
16 know where we stay. He come over there and do this, this and
17 that. And I -- you know, I'm scared. How do you know where I
18 live? I don't even know you, sir.

19 Q. Okay. What happened next?

20 A. And then the -- it just was more arguing, and I know at
21 one point in time, Sahleem had took his phone out to take a
22 picture of him because he kept saying he was going to come to
23 where we stayed and that's where he was from.

24 Q. Okay. So did Sahleem take -- did he, in fact, take a
25 picture?

1 **A.** I'm not sure if he even got the chance. Mr. Newton had
2 tackled him by that time.

3 **Q.** So you said Mr. Newton had tackled him. Describe for us
4 what that means, what you saw.

5 **A.** I just seen Sahleem, like, kind of standing there and
6 trying to walk off, and Mr. Newton -- just like you tackle
7 somebody on the football field, he tackled him.

8 **Q.** And did he initiate the action, the physical contact?

9 **MR. MORIARTY:** Leading.

10 **THE COURT:** Sustained.

11 **BY MR. BURRIS:**

12 **Q.** What did Mr. Tingle *[sic]* do in response to him being
13 tackled?

14 **A.** He tried to fight back.

15 **Q.** Okay. So this is two men fighting?

16 **A.** Yeah. Like wrestling and punching and headlocks, stuff
17 like that.

18 **Q.** And where were you?

19 **A.** I was in the -- in the street at that part and on the curb
20 kind of. Like, you know, I was more so in the street, though,
21 at that time.

22 **Q.** And the street -- there's two streets there. There is 7th
23 Street and there is Chester Street.

24 **A.** Whatever street is closer to BART.

25 **Q.** Okay.

1 **A.** So 7th Street.

2 **Q.** Okay. All right.

3 Now, were you in the street when the fighting was going on
4 between the two?

5 **A.** Yeah. I was in the street at that time.

6 **Q.** And -- and where were you at the time Mr. Newton charged
7 Mr. Tingle *[sic]*?

8 **A.** I was like in the street, because I was -- we were fixing
9 to walk off, but I was already ahead of them -- well, him. And
10 I was still trying to see because I didn't see my sister on the
11 corner no more, and now I just see him rush him so I'm just
12 right there. I never went to BART or anything else. I was
13 looking.

14 **Q.** So counsel made reference to the fact that somehow you
15 were not really looking for your children; is that true?

16 **A.** No.

17 **Q.** Describe for us what you were trying to do in connection
18 with your children as well as when the fight was going on?

19 **A.** Well, I had already -- when we were still arguing, I never
20 seen my sister standing, like, on the corner, so I'm still
21 trying to see where she went and make sure -- because by now
22 they're fighting and now I'm really yelling this way, "Go,
23 Ardanna." Ardanna is not even right there. I didn't even know
24 that.

25 But by the grace -- I'm just thankful she wasn't there

1 because she was smart enough to go. Once she -- she probably
2 seen him tackle him. I don't know. But I just know my sister
3 and children weren't right there.

4 So by this time when the gun is being pointed from the
5 officer, I'm really in the street yelling to go, and nobody's
6 right there.

7 **Q.** Okay. Were you -- while all this was taking place, did
8 you stay in one particular spot for this entire period of time?

9 **A.** No.

10 **Q.** What did you do? Describe for us your movements.

11 **A.** Well, the -- they were kind of going from the tacorea to
12 Upper Kutz, and the fight is right here (indicating). Then
13 they're this way (indicating), so I'm moving around myself.
14 I'm in the street. I'm on the curb. I'm this way
15 (indicating). I just wasn't standing in one spot. The fight
16 wasn't in one spot.

17 **Q.** Okay.

18 **A.** The fight was half a little block right there.

19 **Q.** Okay.

20 Thank you, Your Honor. I have no further questions.

21 **THE COURT:** Recross limited to the scope of redirect.

22 **MR. MORIARTY:** Frances, can I have this one marked
23 next?

24 **THE CLERK:** 108.

25 (Trial Exhibit 108 marked for identification)

1 **MR. MORIARTY:** May I approach the witness, Your Honor?

2 **THE COURT:** You may.

3 **MR. MORIARTY:** I'm handing the witness 108.

4 **THE COURT:** Do you have a copy for me?

5 **MR. MORIARTY:** I do.

6 **THE COURT:** And for Mr. Burris?

7 **MR. BURRIS:** What is it, for the record?

8 **THE COURT:** 108.

9 **MR. BURRIS:** Exhibit 108?

10 **THE COURT:** It just got marked.

11 Did you hand one to Mr. Burris?

12 **MR. MORIARTY:** I did, Your Honor.

13 **RECROSS-EXAMINATION**

14 **BY MR. MORIARTY:**

15 **Q.** Ms. Turner, you have in front of you Defense Exhibit 108;
16 correct?

17 **A.** Yes.

18 **Q.** You just testified that your relationship with Mr. Tindle
19 had its ups and downs; correct?

20 **A.** Correct.

21 **Q.** But that your -- the ups and downs with Mr. Tindle had no
22 effect on his relationship with his son; correct?

23 **A.** Correct.

24 **Q.** You also testified that there was no issues with legal
25 custody; correct?

1 **A.** Correct.

2 **Q.** Can you take a look at the sixth page of Defense Exhibit
3 108, for the record, which is San Francisco Police Report
4 160766300, and I've -- the copy that you have, Ms. Turner, has
5 highlights on it; correct?

6 **A.** Yes.

7 **MR. BURRIS:** Counsel, can we have a date of this
8 report? You make reference. What's the date on it?

9 **MR. MORIARTY:** Well, the date is September 21, 2016,
10 which is on the first page of 108.

11 **THE COURT:** And are you talking about -- are you
12 directing her to the page that shows on the top right 8 of 14?

13 **MR. MORIARTY:** Correct. And to make this run more
14 smoothly, as I explained, that page which says 8 of 14 in the
15 upper right-hand corner.

16 **Q.** Do you see that, Ms. Turner?

17 **A.** It says what?

18 **Q.** It says period 8/14, the one you're looking at.

19 **A.** Mine says 6 slash 14.

20 **THE COURT:** You can approach and make sure she's on
21 the right page.

22 **THE WITNESS:** Now I found it.

23 **THE COURT:** Found it?

24 **THE WITNESS:** Yeah.

25

1 **BY MR. MORIARTY:**

2 **Q.** Do you have the one that says 8 of 14?

3 **A.** Uh-huh.

4 **Q.** That page has certain portions highlighted; correct?

5 **A.** Yes.

6 **MR. BURRIS:** Counsel, do me a favor and help me find
7 what you're talking about.

8 **MR. MORIARTY:** Of course.

9 **MR. BURRIS:** Is this --

10 **MR. MORIARTY:** Yeah.

11 **MR. BURRIS:** Thank you.

12 **MR. MORIARTY:** No problem.

13 **Q.** Do you see the second line in the highlighted portion
14 below at about 11:54 hours? The second line says, "Turner was
15 upset because she had not given permission to Tindle to pick up
16 their son as she had physical custody of their children," and
17 in parentheses, it says "although there were no court documents
18 awarding her sole legal custody."

19 My question, Ms. Turner, is did you tell the police that
20 you had full physical custody of your --

21 **A.** I basically did. Nobody had custody. They lived with me.

22 I don't -- they lived with us. We pick them up.

23 **Q.** And we can agree during this incident of September 24th,
24 2016, you had issues with Mr. Tindle; correct?

25 **A.** Yes.

1 Q. There was an argument?

2 A. Yes.

3 Q. During that argument, your son was involved. He was with
4 you; correct?

5 A. Yes. And he wanted to go with his dad.

6 Q. Okay. And during that argument, you disagree with the
7 sixth and seventh lines that says, "Tindle became increasingly
8 angry and using both of his hands, shoved Turner on her upper
9 chest area, causing her to make contact with the building
10 behind her." Are you saying that did not happen?

11 A. We were never by a building. We were just in the -- I
12 can't say that that's a building right there. I never got
13 pushed into a building. That's what I'm saying. We were
14 playing tug-a-war with the coat, and I chased him.

15 Q. Did he ever shove you in the chest area?

16 A. No. He didn't get a chance to shove or do anything. He
17 tried to run from me.

18 Q. And when he ran from you, he ran with your property;
19 correct?

20 A. He ran with his phone that I had. I had both phones in my
21 coat.

22 Q. And you --

23 A. And that was what was in the jacket when I chased him
24 down.

25 Q. And you testified that there was a good Samaritan in that

1 same paragraph towards the bottom. Do you agree with the
2 report --

3 **MR. BURRIS:** Objection. Asked and answered. Beyond
4 the scope.

5 **THE COURT:** Sustained.

6 **MR. MORIARTY:** Okay.

7 **Q.** Well, you testified that you disagree with the police
8 report that Mr. Tindle ran away with your son; correct?

9 **MR. BURRIS:** Objection. Same objection, Your Honor.
10 There is no stuff on cross-examination about this or direct.

11 **THE COURT:** This is beyond the scope.

12 **MR. MORIARTY:** Your Honor, she said that her issues
13 with Mr. Tindle had no affect with his relationship with his
14 son, and I think this goes directly to that testimony.

15 **THE COURT:** Okay. What line are you trying to get to?

16 **MR. MORIARTY:** It would be the same paragraph, six
17 lines from the bottom. Do you see where it says five-dollar
18 bill?

19 **THE COURT:** All right. Hold on.

20 **MR. MORIARTY:** It will start after that.

21 **THE COURT:** All right. Quickly.

22 **BY MR. MORIARTY:**

23 **Q.** Ms. Turner, I refer you to that same paragraph in the
24 highlighted portion at the bottom. Do you see that, where it
25 says "Turner attempted"?

1 **A.** "Turner attempted" --

2 **Q.** Do you see where that is? And I will ask a question based
3 on that.

4 **A.** Yeah. No, I don't see it, I'm saying.

5 **MR. MORIARTY:** Can I approach, Your Honor?

6 **THE COURT:** You may.

7 **THE WITNESS:** I don't have on my glasses.

8 **BY MR. MORIARTY:**

9 **Q.** Right there. It starts right there. I pointed to you to
10 the sentence that starts "Turner attempted." Do you see that?

11 **A.** Yes.

12 **Q.** Okay. And so where it says "Turner attempted to grab
13 Tindle's property to regain possession of her property" --
14 excuse me. "Turner attempted to grab Tindle's property to
15 regain possession of her property, but Tindle pushed her away
16 and then left with the six-year-old" --

17 **MR. BURRIS:** "Took."

18 **THE COURT:** "Took."

19 **MR. MORIARTY:** I'm sorry.

20 **Q.** "Took his six-year-old boy by the hand and fled the scene
21 on foot." And it continues that you attempted to follow Tindle
22 and your son.

23 Do you think that's inaccurate?

24 **A.** I think it's inaccurate because I had already snatched my
25 jacket and the babe -- well, I ain't going to say snatched my

1 son, but I had already took the jacket and my child and chased
2 him up the street for trying to even leave.

3 Q. Your son was present when Mr. Tindle was arrested;
4 correct?

5 A. Yeah. I had picked him up from school.

6 Q. Was your son present in the 2015 incident at 98 Blythedale
7 when Mr. Tindle was arrested?

8 A. I think he had just came with my cousin or my uncle, if
9 I'm not mistaken.

10 Q. Mr. Burris asked you questions about the fight between
11 Tindle and Newton that led to the shooting, and I just want to
12 make sure I'm clear in your testimony and I'll sit down.

13 A. Uh-huh.

14 Q. You saw the fighting between the two men when it turned
15 physical; correct?

16 A. I seen him rush him, but I wasn't this close at that time
17 when it happened.

18 Q. And you never saw anyone with a gun; right?

19 A. Yeah. Neither person.

20 Q. You just heard the gunshot; correct?

21 A. Yeah. And I still didn't see Mr. Newton shot or anything.
22 I just seen them fighting still. That's the only reason I
23 thought it could be a firecracker or something.

24 MR. MORIARTY: That's all the questions I have --
25 wait, wait, wait. Maybe not.

(Defense counsel confer off the record.)

MR. MORIARTY: That's all the questions I have. Thank you, Ms. Turner.

Can I grab that exhibit from her?

THE COURT: You may.

Redirect?

MR. BURRIS: Not much, Your Honor.

REDIRECT EXAMINATION

BY MR. BURRIS:

Q. Directing your attention back to the event that counsel has made reference to, is that -- was that a situation with reference to your son, what was going on there?

A. Well, what was going on was Sahleem was trying to leave and my son wanted to go with him, and I was already pissed off that he was trying to leave, and then we started -- got into a verbal argument, and then he tried to take his phone back so we were playing tug-a-war with the coat, and he start running, and I chased him.

Q. After that --

A. Two blocks up.

Q. This was in 2016 --

A. But we were kind of by a park, not a building.

Q. Let me finish this up.

After the event on that particular day, did you and he cohabitate together after that?

1 **A.** Yes.

2 **Q.** And did you and he have custody of your son during that
3 period of time?

4 **A.** Yes.

5 **Q.** And was he -- has his relationship with his children as a
6 dad -- did it change in any way as a consequence of this event
7 that took place in 2016?

8 **A.** No.

9 **Q.** Did it improve or not or continue the way it was?

10 **A.** It continued the way it was. Loved his dad. Of course,
11 it improved because my son was older after that and, you know,
12 smarter, stronger.

13 **MR. BURRIS:** Thank you. I have no further questions.

14 **THE COURT:** Anything on that little set of questions?

15 **MR. MORIARTY:** No, Your Honor. Thank you.

16 **THE COURT:** All right. You may step down.

17 Any more witnesses by the plaintiff?

18 **MR. BURRIS:** No, Your Honor. Plaintiff rests.

19 I assume the exhibits have been worked out, but if they
20 haven't been, subject to that.

21 (Pleitiffs rest.)

22 **THE COURT:** All right.

23 And next witness for the defense. Mr. Moriarty,
24 Mr. Allen, your next witness.

25 **MR. MORIARTY:** Michael Cardoza. I'm getting him.

1 **THE COURT:** Michael Cardoza. All right.

2 So, Mr. Moriarty, let's go about 15 minutes, and then
3 we'll take a break.

4 **MICHAEL CARDOZA,**

5 called as a witness for the Defendant, having been duly sworn,
6 testified as follows:

7 **THE WITNESS:** I do.

8 **THE CLERK:** Please be seated. And I'm just going to
9 grab a couple things out of the way here.

10 Please state your full name and spell your last name.

11 **THE WITNESS:** Sure. My name is Sergeant Michael
12 Cardoza. That's C-A-R-D-O-Z-A.

13 **THE COURT:** Good morning.

14 **THE WITNESS:** Good morning, Your Honor.

15 **THE COURT:** You may proceed.

16 **DIRECT EXAMINATION**

17 **BY MR. MORIARTY:**

18 **Q.** Good morning, Sergeant.

19 **A.** Good morning.

20 **Q.** By whom are you employed?

21 **A.** I'm employed by the Oakland Police Department.

22 **Q.** How long have you worked for the Oakland Police
23 Department?

24 **A.** For 20 years.

25 **Q.** What's your current assignment?

1 **A.** I'm currently a sergeant in the patrol field.

2 **Q.** What was your assignment in January 2018?

3 **A.** I was a sergeant in the homicide section.

4 **Q.** Can you explain briefly to the jury what you did as a
5 homicide investigator.

6 **A.** Sure. I worked five years in the homicide section, and
7 while I was over there, I worked active homicide cases where I
8 was partnered up with another person, and we would be on
9 rotation to go out and investigate homicides or suspicious
10 deaths, and then towards the tail end of that, I started
11 investigating officer-involved shootings.

12 **Q.** Explain to the jury what it means, an officer-involved
13 shooting investigation? What happens that leads to an
14 officer-involved shooting?

15 **A.** Sure. It's any time a police officer is involved in a
16 shooting, whether the person dies or not, just the simple
17 shooting. We, in the homicide section, go out and investigate
18 the incidents and details of that shooting.

19 **Q.** Were you assigned to investigate an officer-involved
20 shooting that took place on January 3, 2018?

21 **A.** Yes, I was.

22 **Q.** Were you the primary investigator for that
23 officer-involved shooting?

24 **A.** Yes, I was.

25 **Q.** What does that mean?

1 **A.** It means that I'm the lead investigator. That although
2 there is a lot of moving parts, I am the primary person, like
3 the contact person, that pretty much organizes the
4 investigation and puts the pieces together.

5 **Q.** Where were you when you received information that an
6 officer-involved shooting took place on January 3, 2018?

7 **A.** At that time, I was actually in the homicide section
8 working on another case when I received a phone call that there
9 was an officer-involved shooting involving BART police.

10 **Q.** Were you briefed on any other details of the shooting
11 while you were still at the Oakland Police Department homicide
12 section?

13 **A.** I just had very little briefing. I was told that there
14 was an officer-involved shooting involving BART, and there
15 were -- there was one person deceased and another person shot.

16 **Q.** Did you receive information as to where the shooting took
17 place?

18 **A.** Yes. I received the information that it was across the
19 street from the West Oakland BART station, located at 7th and
20 Chester.

21 **Q.** When you -- actually, before we get to that, your work on
22 this led you to create a report; correct?

23 **A.** Yes.

24 **Q.** An Oakland Police Department -- they used to be called
25 follow-up investigations?

1 **A.** It's now called IAR, which is Investigative Action Report.

2 **Q.** Okay. And that's your detective log; right?

3 **A.** Yes.

4 **Q.** What is the report number? Do you have that committed to
5 memory, or would you need to take a look at your report to
6 remember what the report number for -- from the Oakland Police
7 Department is for this shooting incident?

8 **A.** I'm almost certain it was 18-000494.

9 **Q.** Okay.

10 **A.** I could double check, just to make a hundred percent sure.

11 **Q.** We have it here.

12 Do you have the report with you?

13 **A.** I do.

14 **Q.** Go ahead and take a look at it. Do not read from --
15 excuse me. Do not speak when you're looking at it, and go
16 ahead and confirm your belief that it is that police report
17 number.

18 **A.** Okay.

19 Okay.

20 **Q.** Were you correct?

21 **A.** I was.

22 **Q.** Okay. All right.

23 So those are the details that you knew while you were at
24 the police department, and from there, did you go ahead and go
25 to the scene of the shooting?

1 **A.** I did.

2 **Q.** Not too far away from the police department?

3 **A.** No. It's fairly close.

4 **Q.** Did you learn when you got to the police -- excuse me --
5 to the scene the name of the officer who was involved in the
6 shooting?

7 **A.** I did.

8 **Q.** And what was that officer's name?

9 **A.** The officer's name was Officer Joseph, I believe it's
10 Mateu.

11 **Q.** Do you see that person in court?

12 **A.** I do.

13 **Q.** Can you describe where he's seated and what he's wearing?

14 **A.** Yes. He's against the far left wall wearing a blue suit
15 with a blue and striped tie, white shirt.

16 **Q.** Okay. And did you learn the name of the individual who
17 had died at the scene?

18 **A.** I did.

19 **Q.** What was that individual's name?

20 **A.** His name was Sahleem Tindle.

21 **Q.** Did you learn -- you previously testified that another
22 individual was shot. Do you remember that?

23 **A.** I do.

24 **Q.** Did you learn that person's name?

25 **A.** I do.

1 Q. What was that person's name?

2 A. His name was Rayvell Newton.

3 Q. Was he at the scene of the shooting when you arrived to
4 7th and Chester?

5 A. No, sir.

6 Q. Where was he?

7 A. He was at the hospital.

8 Q. Now, when you get to the scene of a shooting, what do you
9 usually do as the lead investigator?

10 A. Well, there's a lot of moving parts. Something involving
11 an officer-involved shooting, there is many, many police
12 officers out there, so -- so the first thing I try to do is
13 have a briefing with the primary people on scene; in other
14 words, the incident commander, the primary supervisor, anybody
15 pertinent to that investigation, including technicians, things
16 of that nature, that will provide me the most updated details.

17 Q. Okay. And I want to -- I want you to explain to the jury
18 what a technician is.

19 A. Sure. In the Oakland Police Department, we have
20 technicians. There is a couple sworn technicians, meaning they
21 are police officer technicians, but most of them are civilian
22 technicians, so they are not sworn police officers; however,
23 their job title is to go out and collect evidence, take
24 photographs, search the scene, prepare diagrams, things of that
25 nature, so that we have all that, and we can later go back, and

1 it helps put everything together.

2 Q. Right. And so when you get to a scene of a shooting, it's
3 the normal course to go ahead and talk to whichever evidence
4 technician is in charge of the shooting scene; correct?

5 A. Yes.

6 Q. Did you do so when you got to 7th and Chester on
7 January 3, 2018?

8 A. I did.

9 Q. Were you directed to any evidence that a shooting had
10 occurred at that corner?

11 A. Yes.

12 Q. Could you tell, based on what you saw and what you learned
13 from the evidence technician, how -- how many firearms were
14 involved in the shooting?

15 A. Well, I knew that there was at least two firearms involved
16 in that shooting.

17 Q. Before you left the police department, you understood that
18 Officer Mateu had shot his firearm; correct?

19 A. Yes.

20 Q. Did you see evidence at the scene that, in fact, he had
21 shot his weapon?

22 A. Yes.

23 Q. And what did you see?

24 A. There were shell casings, spent shell casings located at
25 the crime scene.

1 Q. Could you briefly describe to the jury what a spent shell
2 casing is?

3 A. Sure. So a spent shell casing is -- it's the housing that
4 holds the lead bullet, and then when the firearm fires the
5 bullet, it expels the shell casing, so it's a -- usually a
6 brass empty shell casing that ejects from the firearm if it's a
7 semiautomatic firearm.

8 Q. How many shell casings were at the scene that you believe
9 were related to Officer Mateu's shooting of his weapon?

10 A. There were three shell casings that were believed to be
11 Officer Mateu's.

12 Q. Was there evidence of another -- was there any evidence at
13 the scene that another gun was used in the shooting incident?

14 A. Yes.

15 Q. What evidence was that?

16 A. There was an additional shell casing and then there was --
17 there was the building right next to it that had a -- had been
18 shot.

19 Q. Okay.

20 Frances, could I have this on?

21 Sergeant, on the screen is Defense Exhibit 101A. Do you
22 see that?

23 A. I do.

24 Q. Could you tell us if you recognize that photograph?

25 A. Yes, I do recognize it.

1 Q. What is shown in that photograph?

2 A. So what's shown in the photograph is the Upper Kutz Barber
3 Shop located at 14987th Street.

4 Q. And to the right of that is another business; is that
5 correct?

6 A. It's like a little -- like a little taco place.

7 Q. During your time working homicide and officer-involved
8 shootings with the Oakland Police Department, have you become
9 familiar with the term "strike mark"?

10 A. Yes.

11 Q. What's a strike mark?

12 A. A strike mark is something that we look for. It's
13 evidence that a bullet has struck an object. A strike mark
14 could be located on the ground when a bullet strikes the ground
15 or a building. There's often indication that the bullet head
16 made contact with that item or object.

17 Q. What's a bullet hole?

18 A. A bullet hole is when the lead bullet fired from a firearm
19 actually penetrates that object, and so it could either go
20 through the object, creating a small hole, or it could be stuck
21 in the item itself, whether it be in wood, stucco, anything
22 like that.

23 Q. When you talked to the evidence technician at the scene of
24 this shooting on January 3, 2018, did he or she direct you to
25 any evidence of either a strike mark or a bullet hole?

1 **A.** Yes.

2 **Q.** And where was that?

3 **A.** That was at the front window of the Upper Kutz, so if
4 you're looking at the window in the picture here, it would be
5 the left window.

6 **Q.** Okay. And in the picture, which is 101A, there appear to
7 be two windows underneath the awning that says "Upper Kutz"?

8 **A.** Yes.

9 **Q.** And as we look at it, it's the window on the left side?

10 **A.** Yes. That's what I recall.

11 **Q.** Okay. Could you take a look at Defense Exhibit 101B,
12 which is on the screen now.

13 **A.** Okay.

14 **Q.** Do you recognize what's shown in that photograph?

15 **A.** Yes.

16 **Q.** Tell us what is shown in that.

17 **A.** That is a -- well, believe it or not, your picture is
18 upside down.

19 **Q.** Oh, I believe it. Let me turn it.

20 So as we're looking at it, 101B has an evidence tag in the
21 upper right-hand corner. Do you see that?

22 **A.** That is correct.

23 **Q.** So now I'm going to flip it around, and now the evidence
24 tag is in the bottom left-hand corner; is that correct?

25 **A.** Now the picture is correct.

1 Q. So that's facing in the correct direction?

2 A. Yes.

3 Q. With the evidence tag on the bottom left-hand corner;
4 correct?

5 A. That is correct.

6 Q. Tell us what you see when we make that adjustment to the
7 exhibit.

8 A. So what you've shown me is a closeup of the window, which
9 shows the window covered by a wrought iron bars, and then
10 beyond the wrought iron bars, there is a glass window which has
11 two holes in it.

12 Q. When you were referring to a strike mark before, which
13 portion of this picture were you referring to?

14 A. Well, if you look at the lower hole made in the glass, the
15 wrought iron right there has a indentation where it was
16 apparent a bullet had struck that wrought iron and then we
17 believe split into two fragments going into the building.

18 Q. Okay. When you said the lower one, are you referring to
19 where I'm pointing the pen right now?

20 A. Yes. And there's just a small indentation in the metal,
21 if you keep --

22 Q. Right there?

23 A. Yes. Right there.

24 Q. And so what you were able to figure out with the
25 technician is that it appeared that a bullet hit this iron of

1 the gate; correct?

2 **A.** Yes.

3 **Q.** And then two pieces of the bullet went in two different
4 directions, one broke the window at the lower location where
5 I'm pointing?

6 **A.** That's correct.

7 **Q.** And the upper location was also hit by another portion of
8 the bullet?

9 **A.** That's correct.

10 **Q.** Okay.

11 **THE COURT:** Is this a good time?

12 **MR. MORIARTY:** Oh, yeah. Thanks, Your Honor.

13 **THE COURT:** All right.

14 Ladies and Gentlemen, we will take a 15-minute break, so
15 we will stand in recess for 15 minutes.

16 (Proceedings were heard out of presence of the jury:)

17 **THE COURT:** Okay. Sergeant, you can step down.

18 Okay. And why don't I just see -- are you doing this one,
19 Mr. Burris?

20 **MR. BURRIS:** No. No.

21 **THE COURT:** Why don't I -- we will stand in recess for
22 15 minutes.

23 (Recess taken at 10:41 a.m.)

24 (Proceedings resumed at 10:55 a.m.)

25 **THE COURT:** Let's call the jury in.

1 (Proceedings were heard in the presence of the jury:)

2 **THE COURT:** We are back on the record. The record
3 will reflect the jury is back with us.

4 And you may continue. You may proceed.

5 **MR. MORIARTY:** Thank you.

6 **Q.** Sergeant, we left off when you were testifying about that
7 strike mark on the iron in front of the window. Do you recall
8 that?

9 **A.** Yes.

10 **Q.** Okay. And during your time in your five years in homicide
11 and your time in officer-involved shootings, had you seen
12 strike marks before?

13 **A.** Yes.

14 **Q.** And you had seen the evidence of a bullet striking
15 something hard and that bullet going in a different direction;
16 correct?

17 **A.** That's correct.

18 **Q.** Is there any way to predict, based on your experience, the
19 direction a bullet might go after it strikes something hard?

20 **A.** Based on my experience, if a bullet strikes something,
21 there's really no set place that the bullet will go. It
22 depends on how hard it strikes, the angle it strikes. It could
23 go left, it could go right. It's really unknown where that
24 bullet's going to travel.

25 **Q.** Staying with this evidence in photo 101B, did you later,

1 in your investigation, confirm that a bullet had, in fact,
2 caused the damage that's shown in that photograph?

3 **A.** Yes.

4 **Q.** What did you do?

5 **A.** Well, I called the -- there was a bullet hole in the back
6 of the barber shop. It was up high on the back wall. And I
7 could see the bullet hole there. I confirmed with the owner of
8 the barber shop that that was not previously there, and so
9 based off that, I believed there was evidence of a lead bullet
10 in the wall of the barber shop.

11 So I called the crime lab and had them come out, and so
12 they assisted in cutting open a portion of the wall and
13 locating the lead bullet that had penetrated.

14 **Q.** Through the window and then into the wall?

15 **A.** Yes.

16 **Q.** Gotcha.

17 Going back a second, you described that three shell
18 casings were found that corresponded to the officer's firearm;
19 correct?

20 **A.** Yes, sir.

21 **Q.** And that one shell casing was found that corresponded to
22 the other gun that was involved; correct?

23 **A.** Yes. That's correct.

24 **Q.** What type of gun was that as far as the other gun that was
25 involved in this shooting incident?

1 **A.** The other gun was described as a SIG Sauer semiautomatic
2 .40 caliber firearm.

3 **Q.** As a part of your investigation, did you try to look for
4 any surveillance video which might have captured this incident?

5 **A.** Yes. We did a full canvas. I had officers specifically
6 looking in every direction that surrounded the entire crime
7 scene, looking for surveillance cameras.

8 **Q.** Were you able to obtain any surveillance from an AC
9 Transit bus?

10 **A.** Yes. It was learned that the AC Transit bus was pulling
11 up to that location at the time of the shooting, and I know
12 from prior investigation that AC Transit buses have full video
13 all the way around their buses.

14 **Q.** On the screen right now is Defense Exhibit 101C. Do you
15 see that?

16 **A.** I do.

17 **Q.** Are you familiar with what is shown in this photograph?

18 **A.** Yes, I am.

19 **Q.** Where did this come from?

20 **A.** So this came from the front camera of the AC Transit bus
21 as it is driving northbound on Chester towards 7th Street, and
22 then you can see the Upper Kutz Barber Shop in the top portion
23 of that photo.

24 **Q.** And this was the still that you were able to take from the
25 AC Transit bus video?

1 **A.** Yes. I had the video, and I was able to pause it and
2 capture a screenshot, which also indicated the date, time, and
3 the time of the -- the video at the time that I stopped it and
4 screenshotted it.

5 **Q.** Okay. As we look at this still, is this before
6 Officer Mateu shoots his firearm?

7 **A.** Yes. This is before the shooting occurred.

8 **Q.** Can you see my pen as I point to certain things in the
9 photo underneath the Upper Kutz?

10 **A.** Yes, I do.

11 **Q.** If we've heard testimony that it looks like two people are
12 fighting under the Upper Kutz -- do you see that where I'm
13 pointing?

14 **A.** Yes, I do.

15 **Q.** Is that consistent with what you learned during your
16 investigation?

17 **A.** Based on my investigation and the -- my observation of the
18 video, I saw what shows to be two people on the ground
19 wrestling at that location.

20 **Q.** Okay. And we heard testimony that there is an individual
21 that is standing, as we look at this still, to the left of
22 those individuals. Do you see that?

23 **A.** I do.

24 **Q.** And we've heard testimony that that's Ms. Ciara Turner.
25 Is that consistent with your investigation?

1 **A.** Yes. That is correct.

2 **Q.** Showing you what has been marked as Defendant's 101D,
3 that's now on the screen. Do you see that?

4 **A.** I do.

5 **Q.** Is this another still that you were able to get from the
6 AC Transit surveillance video?

7 **A.** Yes. I was trying to capture a timeline from the bus
8 video up to the time of the shooting.

9 **Q.** There is a red circle in the upper right-hand portion of
10 101D. Do you see that?

11 **A.** I do.

12 **Q.** Where did that red circle come from?

13 **A.** I put the red circle on there to show that was the BART
14 officer, Officer Mateu, running from the BART station to the
15 two individuals that were on the ground in front of the
16 Upper Kutz Barber Shop.

17 **Q.** Pointing to the bottom of this Exhibit 101D, do you see
18 where the red pen is?

19 **A.** Yes.

20 **Q.** Is the bottom of this exhibit timestamped?

21 **A.** It is.

22 **Q.** Okay. And when you -- when you watched this video, did
23 you understand the 16:40:15 to mean what?

24 **A.** So it's military time. So I know that 16:40 is 4:40 p.m.,
25 and in this photo, it's 4:40 and 15 seconds.

1 Q. If I put 103 -- excuse me -- 101C back on the screen, do
2 you see that?

3 A. Yes.

4 Q. That's the one we previously looked at. Am I safe to
5 say -- actually, I could put them both on the screen -- that
6 the 101C which I'm pointing at now took place 11 seconds before
7 101D?

8 A. That is accurate.

9 Q. During your 20 years with the Oakland Police Department,
10 you've conversed with quite a few members of the community;
11 correct?

12 A. That's correct.

13 Q. Have you ever heard of the term "street slang"?

14 A. Yes.

15 Q. Prior to joining homicide, the homicide section of the
16 Oakland Police Department, it would be normal for you to talk
17 to citizens, whether they be witnesses or suspects or just the
18 general public in Oakland; correct?

19 A. Yes, sir.

20 Q. And that was during your time on patrol?

21 A. Yes. Patrol, specialized units, traffic, a number of
22 different jobs.

23 Q. Okay. And that concept of talking to members of the
24 community didn't change when you went into the homicide
25 section; correct?

1 **A.** No, sir.

2 **Q.** And during that time, you would talk to witnesses who may
3 have seen a homicide?

4 **A.** Yes.

5 **Q.** You talked to suspects who may have been potential persons
6 who committed the homicide?

7 **A.** That's right.

8 **Q.** During that time, did you also listen to what are known as
9 jail calls?

10 **A.** I did.

11 **Q.** Briefly describe what a jail call is.

12 **MR. NISENBAUM:** Objection. Relevance, Your Honor.

13 **THE COURT:** Overruled.

14 **THE WITNESS:** So a jail call is something that we --
15 we use in our investigations. Jail calls are when a person's
16 obviously incarcerated and taken to jail, they make phone
17 calls. There are -- there's, like, I guess, warnings at the
18 beginning that the police could monitor the jail calls, so
19 they're not subject to privacy, in other words, and so a lot of
20 times, we listen to the phone calls. We get the tapes from the
21 jail because even though it's clearly read to them that the
22 police could monitor, there's still conversation made that is
23 valuable to us.

24 **BY MR. MORIARTY:**

25 **Q.** Simple question: It's legal to do what you do to listen

1 to the jail calls; correct?

2 **A.** It is legal.

3 **Q.** And during the time that you were a homicide investigator,
4 could you give us a rough estimate of how many times the
5 homicides that you investigated involved the use of a firearm?

6 **A.** The majority of them involved a firearm.

7 **Q.** Is it safe to say that you learned a lot of street slang
8 in Oakland during the 20 years that you've been in law
9 enforcement?

10 **A.** Yes, sir.

11 **Q.** Why is it important that you are able to understand what
12 certain phrases could mean in the community of Oakland?

13 **A.** Well, it's important because oftentimes someone will say
14 something, and it may not be proper English or said that it's
15 something that you would commonly understand, but it's said in
16 a type of slang that you could interpret what their intention
17 or meaning was.

18 **Q.** Could you give us an idea of an example of something that
19 is said either on the street that could have a completely
20 different meaning on the street compared to in a courtroom.

21 **A.** Sure. So if -- this is just a very common street slang.
22 If a person goes up and robs another person, he might use the
23 term "break yourself." If you hear "break yourself," I know
24 that meaning to be "clean out your pockets, give me everything
25 you got," whereas it might not mean the same to someone else,

1 if that makes sense.

2 **Q.** In that same context, have you heard of, during your
3 homicide investigations, individuals use -- using the term
4 "hammer"?

5 **A.** Yes. That's commonly referred to as a firearm.

6 **Q.** During this case, the jury will hear evidence that a
7 witness said the following phrase: "I should clap your ass,"
8 and that phrase was spoken before a shooting took place. Okay?

9 **A.** Okay.

10 **Q.** Based on what you know in your experience in Oakland, do
11 you have any idea what that phrase in that context would mean,
12 that phrase "I should clap your ass"?

13 **MR. NISENBAUM:** Objection. Calls for speculation,
14 compound. There are multiple meanings, even within street
15 slang.

16 **THE COURT:** Overruled.

17 **THE WITNESS:** So if I was told that -- that term right
18 before a shooting, I would interpret it as *I'm about ready to*
19 *shoot you* or *I'm going to shoot you*.

20 **BY MR. MORIARTY:**

21 **Q.** Going back to your arrival at the scene of 7th and Chester
22 on January 3, 2018, one of the technicians who was there was a
23 technician by the name of Middleton; correct?

24 **A.** Yes.

25 **Q.** Is that a he or she?

1 **A.** It's -- it's a she.

2 **Q.** Okay. And when you were on the scene, you learned, and I
3 think you've testified to it, that obviously Mr. Tindle died;
4 correct?

5 **A.** Yes.

6 **Q.** You also testified that Mr. Newton was shot; correct?

7 **A.** That's correct.

8 **Q.** Did you direct her, being Ms. Middleton, to the hospital?

9 **A.** Yes. Technician Middleton was directed up to the
10 hospital. With everything going on, we try our best to try to
11 obtain photographs of injuries and things of that as soon as
12 possible.

13 **Q.** And you directed her to the hospital to take photographs
14 of Mr. Newton's injuries; correct?

15 **A.** That's correct.

16 **Q.** What is "ShotSpotter"?

17 **A.** So ShotSpotter is a technology that's -- that's commonly
18 used in the city of Oakland. Without knowing all the
19 technicalities of it, there are microphones that are set up
20 throughout Oakland, and these microphones have the technology
21 to detect and pick up gunshots. So I couldn't even tell you
22 like how many there are, but I know that they're all over
23 Oakland. And when there are gunshots, this ShotSpotter company
24 detects the sound of it, and it automatically records the
25 location that they believe the gunshots came from, the time and

1 the date, and it takes an actual recording of the gunshots.

2 It's something that, as police officers, we can play back
3 and listen to that recording to hear if there -- it sounds like
4 there's one set of gunshots or maybe two sets of gunshots, and
5 if they were consecutive or if there was a pause in between, if
6 that makes sense.

7 **Q.** Did you request a ShotSpotter recording for this case?

8 **A.** I did.

9 **Q.** Were you able to obtain that report?

10 **A.** Yes.

11 **Q.** And did the report confirm that there was a shooting at
12 the corner of 7th and Chester?

13 **A.** It did.

14 **Q.** How many times was the ShotSpotter receptor activated for
15 the time that you requested?

16 **A.** So the ShotSpotter recorded a total of five gunshots on
17 January 3rd, 2018, at the location of 7th and Chester.

18 **Q.** Did you -- were you able to tell the time in which the
19 receptor captured those gunshots on that date?

20 **A.** Yes. The ShotSpotter -- the first shot that the
21 ShotSpotter picked up came in at 16:39 hours, which is 4:39,
22 and I believe it was 40 seconds.

23 **Q.** Okay. Was there -- that was the first one that came --

24 **A.** That was the first shot that came in.

25 **Q.** And the next one that was captured, what time was that?

1 **A.** And then there was a second shot captured on the
2 ShotSpotter that came in six seconds later, so that would be
3 16:39, that was the time, and then 46 seconds.

4 **Q.** When did the three additional shots come in to the
5 receptor, ShotSpotter?

6 **A.** So the additional three gunshots, these were three
7 consecutive gunshots, meaning they were fired consecutively,
8 one after the next. Those three gunshots came in at 16:40, so
9 that would be 4:40 and 27 seconds, if I recall correctly.

10 **Q.** Okay. You previously testified that when you got to the
11 scene, you were directed to evidence that a shooting had taken
12 place; correct?

13 **A.** That's correct.

14 **Q.** You found three shell casings that were associated or
15 connected to Officer Mateu's gun?

16 **A.** Yes.

17 **Q.** And you found one shell casing that was connected to the
18 SIG Sauer pistol; correct?

19 **A.** That's correct.

20 **Q.** But what ShotSpotter told you is that there was five
21 shots; correct?

22 **A.** That's correct.

23 **Q.** Has it happened before in your homicide investigations
24 where you have evidence that there was a certain number of
25 shots fired, but the evidence at the scene doesn't match up

1 directly or perfectly with that?

2 **A.** Yes. That's correct.

3 **Q.** Explain how that's happened before.

4 **A.** It -- it could happen if there was, for instance --
5 there's a shooting in the middle of the intersection and either
6 foot traffic or vehicles or something of that nature, sometimes
7 even our own paramedics and fire engines, come, and they will
8 run over a shell casing or a shell casing will somehow get
9 moved or kicked down the road or something like that, so it
10 doesn't always match up a hundred percent, but it gives us a
11 good indication of what we're looking for.

12 **Q.** As a part of your session of this shooting, you reviewed
13 the body-worn camera footage of Officer Mateu; correct?

14 **A.** I did.

15 **Q.** When you reviewed that video, did you hear, according to
16 you, what sounded like gunshots?

17 **A.** I did.

18 **Q.** Were you able to compare what you learned from the
19 ShotSpotter as far as the receptor catching five gunshots to
20 what can be heard on the body-worn camera footage of
21 Officer Mateu?

22 **A.** Yes. I compared the ShotSpotter time that the original
23 shot came in to the time that was on Officer Mateu's body-worn
24 camera and compared that to make sure that they all matched up
25 with each other, which they did.

1 Q. They did. Okay.

2 Did you subsequently request that the SIG Sauer firearm be
3 tested for DNA?

4 A. Yes, I did.

5 Q. Finally, did you -- actually, could you explain to the
6 jury what "ballistics" means?

7 A. Ballistics is simply the process dealing with firearms.
8 It's the -- we have an entire section that is specific to
9 ballistics where they test firearms and they compare the shell
10 casings that ejected from those firearms.

11 Shell casings are very similar to fingerprints, and so
12 under microscopes and the science behind the ballistics, you
13 could essentially compare the shell casings that are on a
14 ground and you can match them up with the firearm to determine
15 that that firearm, because it has a specific firing pin,
16 matches up to the shell casings.

17 Q. In this case, Sergeant, did you ask the two weapons be
18 compared to the evidence that was found at the scene by the
19 crime lab of the Oakland Police Department?

20 A. Yes, I did.

21 Q. Was the work performed?

22 A. Yes, it was.

23 Q. Did you receive any results to confirm that those two guns
24 that were used in this shooting matched the evidence at the
25 scene?

1 **A.** They did.

2 **MR. MORIARTY:** That's all the questions I have,
3 Your Honor.

4 **THE COURT:** Cross.

5 **MR. NISENBAUM:** Thank you, Your Honor.

6 **CROSS-EXAMINATION**

7 **BY MR. NISENBAUM:**

8 **Q.** Sergeant still or lieutenant now?

9 **A.** Sergeant.

10 **Q.** Sergeant. Great.

11 You have your report in front of you still?

12 **A.** Yes, I do.

13 **Q.** Great.

14 I think you told us early in your examination you are the
15 primary person who puts the pieces together in a
16 officer-involved shooting; correct?

17 **A.** Yes.

18 **Q.** And that's what you did in this case? That was your job;
19 right?

20 **A.** I did the best I could, yes.

21 **Q.** Okay. Well, you actually sent an evidence technician to
22 the hospital to meet with Mr. Newton; correct?

23 **A.** Yeah. There was three technicians on the scene, and they
24 all had different tasks.

25 **Q.** Well, did they recover a bullet slug from Mr. Newton's

1 leg?

2 **A.** No. My understanding was it was actually a police officer
3 that reported back that it appeared the bullet from
4 Mr. Newton's leg was a through and through, so no bullet was
5 recovered.

6 **Q.** So efforts were made to recover a bullet from Mr. Newton
7 from his leg, and no bullet was recovered; correct?

8 **A.** Well, if there was a bullet still inside his body, then we
9 would have made an effort to recover that bullet.

10 **Q.** Right. But what you found out, actually, was that it was
11 a through and through, and there was no bullet; correct?

12 **A.** That's what I learned, yes, sir.

13 **Q.** All right. So three -- so there were a total, based on
14 your understanding of all the evidence -- there was a total of
15 five shots fired in this incident; correct?

16 **A.** That's my understanding, yes.

17 **Q.** Three from a gun fired by Officer Mateu; correct?

18 **A.** Yes.

19 **Q.** And two other shots; right?

20 **A.** That's correct.

21 **Q.** Okay. Only one of those two other shots was actually
22 recovered; correct?

23 **A.** One meaning what, sir?

24 **Q.** Well, one bullet.

25 **A.** Yeah. We did find the one bullet, the one piece of lead

1 in the barber shop. There was evidence that the bullet was
2 still in the wall.

3 Q. And you recovered it from the wall; right?

4 A. That's correct.

5 Q. Okay. So that accounts for one bullet. How did you come
6 to learn that there was a gunshot hole in that wall? How did
7 that happen?

8 A. Well, it was after looking at the front window, it was
9 very apparent that a bullet had penetrated the barber shop and
10 then it's just a matter of seeing the bullet hole up on the
11 wall.

12 Q. Okay. Well, there were two holes in the glass, weren't
13 there?

14 A. Yeah. The way it was described by me is that when a
15 bullet strikes an object, it fragments, and so it was described
16 to me that that bullet had fragmented into two piecings; in
17 other words, there is jacketing, there's -- it's a coating
18 that's on the bullet, and that can fragment off.

19 Q. I understand that. My question -- may I have the ELMO,
20 please?

21 This is already shown to you, and it's in evidence. It is
22 Defendant's 101B.

23 Okay. Now, I think I have the right side up here;
24 correct?

25 A. Yes. That's correct.

1 Q. And so the two bullets are -- or the two -- the two holes
2 are here and here, just to the left of where I made the marks;
3 correct?

4 A. Your bottom one is --

5 Q. I understand it's off.

6 A. Yeah.

7 Q. Okay.

8 A. But, yes, there's two holes in the glass, yes, that is
9 correct.

10 Q. We're looking from the outside in; correct?

11 A. Yes. The outside in.

12 Q. And you were able to determine that the -- that the bullet
13 strike that did go through the glass, whether it was one -- one
14 shot or two shots here, only one shot was -- only one bullet
15 was recovered; correct?

16 A. One bullet was recovered, yes, sir.

17 Q. And how high up the wall was it recovered?

18 A. I -- I can't give you an estimate. I don't have a tape
19 measure, but, I mean, you could look at the outside -- the
20 picture that shows the outside of the building and kind of
21 estimate from there.

22 Q. Well, how about you estimate since you went inside.

23 A. Okay. If you want to give me the first picture, then I
24 can take a look at that, and I'll give you my best estimate.

25 Q. I will refer you to page 23 of your report.

1 **A.** Okay. I'll look at that.

2 **THE COURT:** I assume this is to refresh --

3 **MR. NISENBAUM:** Correct.

4 **THE COURT:** Mr. Nisenbaum?

5 **MR. NISENBAUM:** That is correct, Your Honor.

6 **THE COURT:** So once you review it, Sergeant, turn it
7 over and let Mr. Nisenbaum know.

8 **THE WITNESS:** You said page 23?

9 **BY MR. NISENBAUM:**

10 **Q.** Page 23 of your report.

11 **A.** Okay. I think you're -- are you asking me the -- the -- I
12 thought you meant the -- how high the glass break was.

13 **Q.** No, no. I meant the bullet that was recovered in the
14 wall.

15 **A.** Okay.

16 **Q.** Where the hole in the wall was.

17 **A.** I misunderstood your question.

18 **Q.** Fair enough. Fair enough. It happens often, so listen to
19 the question.

20 **A.** So I would say that -- well, I know it was high enough so
21 I'm five-ten, and it was well over my head, and I know we
22 needed a ladder to even get up to the top of the wall, so I
23 would say it's at least eight or nine feet high.

24 **Q.** Okay. And how about the two bullet holes or the two holes
25 in the glass? How tall were those, approximately, off the

1 ground?

2 **A.** I would say that those are -- I mean, I'm just -- like I
3 said, I didn't have a ruler, so I didn't do an official
4 measurement of it, but I would say those are about eye level.

5 **Q.** Okay. About your eye level?

6 **A.** Yeah.

7 **Q.** So you could tell that the bullet, at least one bullet,
8 went through the glass, fragmented, according to what you
9 understand the case to be, and it actually struck a fan before
10 it went in the wall?

11 **A.** Yeah. My understanding, after having the -- the expert,
12 the criminalist, respond out there, the bullet that had entered
13 had ricocheted off one of the fan blades.

14 **Q.** And the fan blade is a ceiling fan; correct?

15 **A.** Yeah. But the thing is, there was two pieces of jacketing
16 laying on the floor in the barber shop, so we weren't certain
17 if the jacketing had struck the fan blade or how the bullet --
18 again, it's -- it's too difficult to determine.

19 **Q.** I guess my question is did the person in the barber shop
20 identify the bullet hole or was that just found independently
21 by officers doing their investigation?

22 **A.** You know, I really don't know. I just can tell you it was
23 pointed out to me that there was a bullet hole in the barber
24 shop that was not there before the shooting.

25 **Q.** Okay. And it was clear, though, that the bullet had

1 traveled at an upward trajectory through the window; correct?

2 **A.** The only thing I can tell you is that the bullet, in my
3 opinion, had struck that wrought iron piece and from there,
4 like I explained before, I can't really explain how it travels
5 after that, but it did -- it ultimately -- ultimately it hit
6 the back wall of the barber shop.

7 **Q.** Is there a better -- a closer-up picture of the wrought
8 iron where it struck?

9 **A.** Do I have a close-up picture?

10 **Q.** Yeah. Do you?

11 **A.** I have what you're presenting to me.

12 **Q.** Well, I'm just asking. Was there a closer-up picture
13 taken?

14 **A.** If there was, I don't -- I don't have it. I can tell you
15 the technician takes hundreds of photos, so I would imagine
16 that there is.

17 **Q.** All right. Well, where's the second bullet?

18 **A.** Well, the second bullet, my understanding, went through
19 and through Mr. Newton's leg, so we looked for it, so it's
20 somewhere out there, probably on 7th and Chester somewhere.

21 **Q.** So you believe that that second bullet was canvassed for
22 but never located; is that right?

23 **A.** Yeah. It's a little piece of lead. It's very difficult
24 to find a bullet. You can find shell casings easily, but very
25 seldom do you find a bullet unless there's an apparent hole and

1 you can track it down from there.

2 Q. There were no other apparent holes, no other apparent
3 bullet holes that you found in the area?

4 A. I described all the strike marks or the bullet holes that
5 I found in the investigation.

6 Q. Were any of those related to the second bullet?

7 A. The -- the only bullet hole I found was inside the barber
8 shop. Again, the other bullet traveled through the victim's
9 leg. It was a through and through, so it's unknown where that
10 bullet ended up.

11 Q. I understand that. I'm asking you, you're the one who
12 puts the pieces together. It sounds like if there are five
13 shots fired, you want to ideally be able to recover five
14 bullets; right?

15 A. I could tell you I looked for the fifth bullet. We looked
16 all on the ground. We looked everywhere, okay, but at the time
17 that we were out there, it was also -- the weather was bad, it
18 was raining, so there was debris on the ground. It's very
19 difficult to find a small piece of lead that is on the ground
20 somewhere.

21 Q. Okay. So I assume you have lights that you use, like
22 flashlights; correct?

23 A. Yes. We use flashlights. We were unable to locate the
24 fifth bullet.

25 Q. Metal detectors?

1 **A.** We don't have -- at least I don't have access to metal
2 detectors.

3 **Q.** Okay. So we have two holes into the window. With respect
4 to where the jacketing was, there is -- well, strike that.

5 How many shell casings were found for the -- for the SIG
6 Sauer?

7 **A.** There was four shell casings on the ground.

8 **Q.** Four shell casings from the SIG Sauer?

9 **A.** No. There was three shell casings from the officer's
10 firearm. Then there was one shell casing on the ground from
11 the SIG Sauer.

12 **Q.** So let me see if I have this right. Three from the
13 officer -- I'm not that good in math, but I know this one.
14 Three from the officer plus one from the SIG Sauer. That's
15 four; correct?

16 **A.** Yes. That's what I said -- stated.

17 **Q.** And you recovered four bullets; correct?

18 **A.** That's correct -- no. No. That's not correct. I did not
19 recover four bullets. Or -- no. I'm sorry. Yes, we did
20 recover three from Mr. Tindle's body. Okay. Four was
21 recovered, yes, that's correct.

22 **Q.** You accounted for four bullets and four shell casings, but
23 there were five shots fired based on your understanding of the
24 ShotSpotter and also the video; correct?

25 **A.** That's correct.

1 Q. Now, does the ShotSpotter -- do you have to deal with
2 echos?

3 A. I don't -- I'm not aware of that.

4 Q. Okay. I'm just asking. I'm not the expert here.

5 A. Yeah. I'm not an expert when it comes to ShotSpotter
6 either. I can just tell you what's given to us.

7 Q. Well, my question is on this document that has two shots
8 going through the window, it makes sense if two shots were
9 fired by the SIG Sauer in the direction through the window,
10 then that would make sense, that you would have two holes in
11 the window; correct?

12 A. It makes sense to someone who is not an expert, but if you
13 bring an expert in, he could clearly give you a good reason
14 like they provided to me.

15 Q. Okay. But they're not here. So you're here telling us
16 what they told you --

17 A. And I'm also telling you I'm not an expert when it comes
18 to how bullets fragment and go in two different directions.

19 Q. What else did you do to try to find the fifth bullet or
20 the fifth shell casing? Anything else?

21 A. Well, I think I detailed myself. We had officers looking
22 everywhere that we could for a small piece of lead on the
23 ground. Okay. There was a lot going on out there. There was
24 people -- there was first responders. There was a lot going
25 on. And so no small piece of lead was located.

1 Q. And no shell casing?

2 A. No shell casing that I'm aware of.

3 Q. Okay. Now, was a further examination of the -- of the
4 wall done where this bullet lodged?

5 A. Well, we cut out the portion -- we cut out a large portion
6 of the wall, and then we cut out a smaller portion of the wall
7 where the bullet was -- had specifically entered the wall, and
8 that was turned in as evidence.

9 Q. My question is did you look to see whether or not there
10 was any other bullet entry wound -- or bullet entry into the
11 wall?

12 A. Yes.

13 Q. Okay. And you were able to rule out there was no other
14 bullet entry into the wall; is that right?

15 A. There was only one bullet, to my understanding, that
16 entered the barber shop and that was found and recovered.

17 Q. Were you present when that examination took place?

18 A. I was.

19 Q. Okay. And were you directing people in a -- where to
20 look?

21 A. No. The crime lab, that's their area of expertise.
22 That's why they were specifically brought there. There was a
23 team of experts above and beyond me that that was their job,
24 their assignment, to locate and find any evidence in the barber
25 shop related to the bullet.

1 Q. Did they know that they were short one bullet and one
2 shell casing?

3 A. They were provided all the information that I had to
4 provide to them at the time, which was there was five shots
5 fired.

6 Q. Okay. Thank you.

7 Now, by the way, didn't you request a gunshot residue
8 sample be done on both Mr. Tindle and Mr. Newton?

9 A. Well, gunshot residue is something that -- that we always
10 ask for, and so because Mr. Tindle was taken from the scene, as
11 well as Mr. Newton, that was a task that the technician was
12 tasked with up at the hospital.

13 Q. Okay. And can you tell the jury what gunshot residue is,
14 please?

15 A. I'm not -- again, it's a scientific thing, so gunshot
16 residue is any time a gun is fired, there are small particles
17 of, let's just say -- let's just say lead, small particles of
18 lead that creates, like, an invisible cloud. You can't really
19 see them. But any time a gun is fired, there is this cloud of
20 residue, and I -- again, I would have to have an expert in here
21 to explain how far this -- this residue goes, but, anyways, it
22 oftentimes lands on your hands or your clothing, and so it's
23 very common that we have these little dabbers, and we do our
24 best to try to have a technician take a sample of either the
25 hands or clothing as soon as possible so that no evidence is

1 lost.

2 Q. Thank you.

3 Now, in this case, you were -- you were able to determine
4 or the examination of the GSR determined that there was GSR
5 residue or gunshot residue on Mr. Newton's hands; correct?

6 A. I can't tell you it was on his hands because I wasn't
7 there, so I don't know specifically where the gunshot residue
8 was tested, but that is very common, that it would be taken
9 from his hands.

10 Q. Okay. Well, look at page 43 of your report and to page
11 44, the last sentence of page 43, the last sentence of 44.

12 A. Okay.

13 Q. Let me know if that refreshes your recollection whether
14 there was -- with respect to where the samples were taken from
15 Mr. Newton.

16 A. Okay.

17 Q. Does that refresh your recollection?

18 A. Yes, it does.

19 Q. And they were taken from his hands; right?

20 A. Yes, it does.

21 Q. And there was, in fact, particles containing lead,
22 antimony, and barium on both hand samples from Mr. Newton;
23 correct?

24 A. Yes. That's what the test results came back as.

25 Q. When we talked about GSR, we are talking about lead,

1 antimony and barium; correct?

2 A. That's what the report indicates.

3 Q. And the same thing was done for Mr. Tindle; correct?

4 A. As far as I know, it was.

5 Q. Well, you know that it was because it was sampled and the
6 test results were given; correct?

7 A. Well, the technician did -- did take say samples, to the
8 best of my knowledge. I couldn't actually find it in a report
9 later, but I believe samples were taken, yes.

10 Q. How about this: Turn the page one page back. See if this
11 refreshes your recollection. Look at the last sentence of page
12 43.

13 A. Well, I know what page 43 says. I'm just saying that I
14 didn't see it in the technician's report, but I'm the one that
15 took both samples to the crime lab in Santa Clara, so I know
16 that samples taken.

17 Q. And you got the results back for Mr. Tindle also; correct?

18 A. Yes, I did.

19 Q. And the results were negative for gunshot residue on
20 Mr. Tindle's hands; correct?

21 A. That's what the results showed.

22 Q. Thank you.

23 Oh, of course Mr. Newton survive the gunshot wound?

24 A. Yes, he did survive.

25 Q. Okay. Now, you indicated that -- oh, also a toxicology

1 report was taken from Mr. Tindle; correct?

2 A. They were taken on both parties, yes.

3 Q. Okay. And Mr. Tindle had no drugs or no alcohol in his
4 system; correct?

5 A. Yeah. Both came back negative.

6 Q. Okay. Now, you've talked about what the word "clap" means
7 as used apparently in jail phone calls and in your
8 investigations; correct?

9 A. There was a slang term that was given to me for my
10 interpretation, yes.

11 Q. Who gave you the slang term? Where did you hear that?

12 A. Well, the attorney gave it to me.

13 Q. I'm asking you -- well, let me ask you this.

14 You interviewed Mr. Evans; correct?

15 A. I don't believe I interviewed Mr. Evans.

16 Q. You reviewed his interview?

17 A. I reviewed all the interviews.

18 Q. Okay. And did you hear there that Mr. Evans used the word
19 "clap"?

20 A. I would have to refresh the interview by Mr. Evans, but
21 there was other officers assisting me with the interviews.

22 Q. I got that.

23 So is there any -- the word "clap" can be used in a number
24 of different ways, in the inner city, correct, or in urban
25 culture, apart from clapping your hands?

1 **A.** Like, do you want to give me some, and I'll tell you if I
2 agree or not?

3 **Q.** Well, "clap," that could mean I want to box you, right, I
4 want to fight you? I should clap you?

5 **A.** If -- I don't think of it like that, but if that's your
6 interpretation, then that's your interpretation.

7 **Q.** Did you grow up in the culture?

8 **A.** In the culture? What culture?

9 **Q.** In a culture where you understood the word "clap" to only
10 mean "shoot"?

11 **A.** No, I did not grow up where I understood "clap" as only
12 mean "shoot."

13 **Q.** Okay. You understand that when people fight or square
14 off, sometimes they use the word "clap" to mean "hit you," like
15 with a fist?

16 **A.** That's your interpretation, sir.

17 **Q.** I'm just asking. Do you have that understanding?

18 **A.** I told you what my understanding of the street term was.
19 If it was given to me in that context, that's what I would
20 interpret it as. You're giving me a different interpretation,
21 your own interpretation, and I answered that for you.

22 **Q.** Let me give you a different context then.

23 **A.** Okay.

24 **Q.** Two people square off like they're about to fist fight.

25 **A.** Sure.

1 Q. One says to the other, "I should clap you." That would be
2 consistent with "I should, like, hit you in the face"?

3 A. If you said that term to me, then I would agree that that
4 probably means you're going to clap me by hitting me in the
5 face, yes.

6 Q. Okay. "Clap" meaning basically "I'll beat you down"?

7 A. You keep putting your spins on it. If you want to keep
8 going, then these are more your interpretations.

9 Q. But you understand that it's contextualized; correct?

10 A. Explain "contextualized."

11 Q. That it's context specific; correct?

12 A. It means it's going with what you're trying to get me to
13 think that it is?

14 Q. No. Not at all.

15 That the way that words are used -- for example, "clap" --

16 A. Yeah.

17 Q. -- it depends on the context in which it's used; right?

18 A. Well, it's based on what the person stating that believes
19 that they're meaning that to be.

20 Q. You found no evidence in your entire investigation that
21 Mr. Tindle pulled a gun out of his pocket; correct?

22 A. Well, based off all the witnesses, I already knew who shot
23 out there. It wasn't -- I didn't -- it wasn't a matter of
24 trying to figure -- go into great detail to determine who shot.

25 Q. So the question -- my question again, when Mr.-- in your

1 investigation -- well, I'll strike that.

2 Were you able to tell whether the two pieces of bullet
3 jacketing fragment that were recovered from the floor inside
4 the business belonged to the same bullet?

5 **A.** No. I did request to have those tested and compared, and
6 I believe that those were inconclusive.

7 **Q.** They were inconclusive?

8 **A.** Yes.

9 **Q.** Meaning they could belong to two different bullets?

10 **A.** You would have to have the firearms expert talk to you
11 about that. I -- I'm just saying that they were inconclusive
12 as far as they couldn't really match up to anything as far as I
13 understood.

14 **Q.** Okay. And you never -- you never actually -- did you
15 actually speak with Mr. Evans?

16 **A.** I -- at some point when I was there recovering the bullet,
17 I spoke to him, but he -- his original statement was taken by
18 someone else on the night of the shooting.

19 **Q.** Okay. Was Evans the owner of the barber shop?

20 **A.** I believe so.

21 **Q.** Okay. That's how it was represented to you?

22 **A.** That's my understanding, yes.

23 **Q.** What is IBiSS?

24 **A.** IBiSS -- IBiSS is -- it's a DNA-type term that the -- I
25 know there is a -- an expert that is going to come and talk

1 about that, but it's a -- well, it's basically a database
2 where -- where things are stored like -- like, for instance,
3 shell casings, things like that. If -- if you take -- like,
4 for instance, you go to a scene of a shooting and the only
5 thing that's there is shell casings on the ground, a lot of
6 times we'll have those shell casings tested, and they'll put
7 that into the system called IBiSS.

8 Well, IBiSS can take and detect -- they'll take a look at
9 the shell casings and they'll match them up with other
10 shootings, and they'll say okay, these -- these were shot by
11 the same gun that was also used in -- I'm sorry -- this
12 shooting over here from a year ago or something like that.

13 So IBIS -- it's a database for ballistics.

14 **Q.** So it compares firearms to previous known instances where
15 a gun had been fired?

16 **A.** Yes. If there's a match, then that's the database that
17 uses to put that together.

18 **Q.** That's a match on the ballistics, basically a ballistic
19 match on the gun?

20 **A.** Yeah. If -- from my understanding -- again, this is
21 way -- this is way out of my league. This is just like we read
22 this in reports that we --

23 **Q.** If you don't know, then just say so.

24 **A.** Well, I know the concept behind it. I just can't give you
25 the science, you know.

1 Q. So -- I hear you.

2 So DNA was taken from -- you obtained Mr. Tindle's DNA;
3 correct?

4 A. Well, Mr. Tindle, we had his DNA, just the fact that he
5 passed.

6 Q. Right. So you had that.

7 What about Mr. Newton? Was his obtained?

8 A. No. Mr. Newton was -- I tried my best to get -- get his,
9 but he was just extremely uncooperative. I had a search
10 warrant for his DNA, and he just -- he -- he just wouldn't
11 allow us to take it.

12 Q. Well, I thought he was treated at the hospital. You went
13 to -- you didn't go, but you sent someone to see him at the
14 hospital; right?

15 A. That's correct.

16 Q. Was there an attempt to get his DNA from him then?

17 A. Yeah. You just can just go take someone's DNA without
18 their permission, unless you have a warrant to get it. And we
19 weren't able to get his.

20 Q. So at the time that he was visited in the hospital, that
21 was right after the shooting happened; right?

22 A. Yeah. But he's also being treated for a gunshot wound, so
23 it's inappropriate to go in there to try to swab his mouth
24 while they are treating a gunshot wound to his leg.

25 Q. Was there an attempt to ask him if he would provide DNA at

1 that time?

2 **A.** I was already writing the search warrant while he was at
3 the hospital, so as soon as he got cleared from the hospital,
4 he was transported to the homicide section where I had the
5 warrant ready to serve him. However, he refused to get out of
6 the back of the police car, so it was a judgment thing where I
7 could either force him to take it or I could later get it and
8 with his cooperation.

9 **Q.** Did you learn that there were no witnesses to the
10 shooting, to the officer-involved shooting, because of the
11 earlier shots being fired? That that had caused everyone to
12 scramble?

13 **A.** There -- there were witnesses.

14 **Q.** Okay.

15 Thank you.

16 One moment.

17 (Plaintiff's counsel confer off the record.)

18 **MR. NISENBAUM:** No further questions.

19 **THE COURT:** Redirect?

20 **REDIRECT EXAMINATION**

21 **BY MR. MORIARTY:**

22 **Q.** Good morning still.

23 **A.** Hi.

24 **THE COURT:** Yes.

25 **MR. MORIARTY:** Just barely.

1 Q. I want to stick with -- to see if we can talk a little bit
2 more about 101B. Okay? That's still on the screen.

3 A. Okay.

4 Q. All right. Let me see here.

5 When you -- when you saw the strike mark, there was one
6 strike mark on the wrought iron fence; correct?

7 A. Yes. That was very apparent to me.

8 Q. And then there were two holes through the window behind
9 the wrought iron fence; correct?

10 A. That's correct.

11 Q. You discussed a bullet jacket.

12 A. Yes.

13 Q. It sounds like what it is is the bullet jacket covers the
14 bullet core, also known as the slug?

15 A. It's kind of how it sounds. It's like a jacket that's on
16 the bullet.

17 Q. Right.

18 A. It protects it.

19 Q. Okay. And after you saw the strike to the -- to the
20 wrought iron, you saw the two holes; correct?

21 A. Yes.

22 Q. And then there was evidence of two parts of a jacket that
23 were also there; correct?

24 A. Yes. There was two pieces of jacketing, so copper --
25 copper jacketing that was located inside the barber shop.

1 Q. Right. Meaning that it could have gone through the window
2 in those two holes; correct?

3 A. Yes.

4 Q. And then further into the barber shop, there was a bullet
5 core which previously would have been covered by the jacket
6 which was found in the wall; correct?

7 A. That's correct.

8 Q. And the way you described it before, once that projectile
9 hits something that's wrought iron, there is no telling which
10 direction it's going to go in; correct?

11 A. I have no idea.

12 Q. In other words, where it ends up doesn't tell you anything
13 except it hit the wrought iron fence. That's it?

14 A. That's correct.

15 Q. You previously testified, Sergeant, that you watched the
16 body-worn camera footage of Officer Mateu; correct?

17 A. That is correct.

18 Q. I'm going to play a portion of this footage from the mark.
19 Right now on the left corner, the bottom corner, it says 6:29.
20 Do you see that?

21 A. I do.

22 Q. I'm going to play about 39 seconds, okay, and then I'm
23 going to ask you some questions about the idea of a secured
24 scene after I play it. Okay?

25 MR. NISENBAUM: I do have an objection, Your Honor,

1 and that is it's beyond the scope, but hearing that last
2 moment.-

3 **THE COURT:** Are you withdrawing your objection or not?

4 **MR. NISENBAUM:** I'm just submitting it for the Court.

5 **THE COURT:** Well, I'm going to overrule it because I
6 think I know where he's going, although I'm not sure I know
7 where he's going.

8 **MR. NISENBAUM:** That's my feeling.

9 **THE COURT:** Given all your questions about finding the
10 bullet -- but I don't know.

11 **MR. NISENBAUM:** That's my feeling, too.

12 **THE COURT:** Proffer?

13 **MR. MORIARTY:** I'm going to show my -- my proffer is
14 that these 39 seconds will show that the scene was not yet
15 secured, and it wouldn't be surprising that evidence could
16 possibly be lost.

17 **THE COURT:** Go ahead. Thirty-nine seconds.

18 **MR. MORIARTY:** I'm going to go from 6:29 to 7:09 and
19 40 seconds. I'm going to mute it so it's easier.

20 (Whereupon, the video was played.)

21 **BY MR. MORIARTY:**

22 **Q.** Sergeant, you have previously watched the video of Mateu's
23 body-worn camera; correct?

24 **A.** That's correct.

25 **Q.** Could you explain to the jury in your experience in

1 homicide investigations, officer-involved shooting
2 investigation, what a secured scene is.

3 **A.** Well, yes. This is far from a secured scene. You're
4 looking at -- you're looking at -- there are citizens all over.
5 This is an active crime scene. Where all these people are
6 standing in the back, this is -- any -- anywhere around here is
7 where there could be potential evidence, and so by the time I
8 got to the scene, at that point, it was secure where we
9 cordoned the entire place off into an inner and outer perimeter
10 with crime scene tape, police officers, but our first and
11 foremost priority is the -- is the medical care of the persons
12 injured, and so that's always going to be our first concern, is
13 to take care of the -- any person that's injured and then do
14 our best to start backing people out of the crime scene so that
15 we can start looking and collecting evidence.

16 **Q.** And when you say a "crime scene" and "secure," is that the
17 yellow tape that we've seen on movies that marks the area where
18 the citizens are supposed to stay out of?

19 **A.** Yes. In fact, if you show the very, very first picture
20 that you showed to me, that, in my opinion -- that's a secured
21 crime scene.

22 **Q.** Okay.

23 Can you put the ELMO back on.

24 And are you referring to 101A, which is now on the screen?

25 Do you see that?

1 **A.** I do.

2 **Q.** And 101A has tape around the scene?

3 **A.** Yes. So there's no individuals in our crime scene. We're
4 able to mark that area off with crime-scene tape. We're able
5 to take our time now to do a thorough canvas and look for any
6 evidence.

7 **Q.** During your five years in homicide, was it unusual to come
8 across a scene where evidence was missing?

9 **A.** Yes.

10 **Q.** It was unusual?

11 **A.** No -- I mean no. It was very common. In fact, on more --
12 more than one occasion through surveillance video, I've seen
13 people actually reaching down and picking up shell casings from
14 a crime scene.

15 **Q.** Before the patrol officers actually get there and are able
16 to cordon off the crime scene; is that correct?

17 **A.** Yes, that's correct.

18 **Q.** You had answered some questions about gunshot residue and
19 a sample that was taken from Mr. Tindle; correct?

20 **A.** That's correct.

21 **Q.** And you just discussed medical attention that was provided
22 to Mr. Tindle; correct?

23 **A.** That's right.

24 **Q.** Do you, based on your investigation of this incident --
25 did you understand that he was tended to at the scene of the

1 shooting?

2 **MR. NISENBAUM:** Objection. Calls for speculation.
3 Beyond -- beyond the -- improper opinion.

4 **THE COURT:** Sustained.

5 **BY MR. MORIARTY:**

6 **Q.** Okay. Do you know where Mr. Tindle went from the scene?

7 **A.** Yes. He went by ambulance. The paramedics took him in
8 the ambulance and then transported him up to ACH or Highland
9 Hospital, as we call it.

10 **Q.** And in the ambulance, the medics, to your knowledge, were
11 attempting to save his life; correct?

12 **A.** Yes. They were actively working on him, to my knowledge,
13 trying to save him.

14 **Q.** The same was true when he got to the Highland Hospital;
15 correct?

16 **A.** Yes. He was rushed into the emergency room where they
17 were making all attempts to save his life.

18 **Q.** Do you have any idea, based on your review of the reports,
19 when the gunshot residue sample was taken from Mr. Tindle?

20 **A.** Honestly, I don't know at what point that it was taken,
21 but based on -- based on my understanding, it was sometime
22 after -- after he was pronounced.

23 **Q.** Why is it important -- why is timing of the gunshot
24 residue sample important in your field; in other words, when
25 the sample was taken?

1 **A.** Well, because you want to take it as soon as possible
2 because people could change their clothes, they could wash
3 their hands. There's a number of things that could change the
4 outcome of the evidence you're trying to collect.

5 **Q.** And you don't know what was being done to Mr. Tindle as
6 far as medically from the time the shooting took place until
7 the time when -- whenever it was that the GSR was taken from --
8 the GSR sample was taken from his hand; correct?

9 **A.** No. I have no idea. I did not go with Mr. Tindle. I got
10 there after he was already transported.

11 **Q.** And you were asked some questions by Mr. Nisenbaum about
12 this "I should clap your ass." Do you remember those
13 questions?

14 **A.** Oh, yeah.

15 **Q.** And about the interpretations. And he also asked you if
16 you had reviewed Mr. Evans's statement that he provided after
17 the shooting incident; correct?

18 **A.** Yes.

19 **Q.** I want to make sure that we're clear on your opinion, and
20 referring to page 12 of your report -- you don't need to look
21 at it -- if the complete hypothetical was as follows: That
22 Evans overheard the light-skinned guy say, "I'll clap your
23 ass," as he kept tugging at his gun, which was in front of his
24 pants pocket, what would your opinion be as far as what that
25 phrase meant?

1 **A.** If that phrase was read to me in that content, then I
2 would think that he -- he had the intent on shooting him with a
3 gun.

4 **Q.** Mr. Nisenbaum asked you about other parts of your
5 investigation and about the numerous interviews that you had
6 taken of numerous people that were witnesses to this incident,
7 and the question is when you have taken those interviews and
8 reviewed all those interviews, was there anything that
9 suggested that Mr. Newton was the shooter at this incident?

10 **A.** Yes.

11 **Q.** That Mr. Newton was the shooter --

12 **A.** No, no, no, no. That Mr. Tindle was the shooter.

13 **Q.** The question is for you was there any witnesses or any
14 evidence that you reviewed that suggested that Newton was the
15 shooter?

16 **A.** Not one.

17 **MR. MORIARTY:** That's all the questions I have,
18 Your Honor.

19 **THE COURT:** Recross?

20 **MR. NISENBAUM:** Very briefly.

21 **RECROSS-EXAMINATION**

22 **BY MR. NISENBAUM:**

23 **Q.** You wrote your report after you found out that the GSR
24 sample for Mr. Tindle had come back negative; correct?

25 **A.** Yeah. I think that was towards the end of the report,

1 yes.

2 Q. And we know that because it's towards the end of your
3 report --

4 A. Yes.

5 Q. -- correct? Okay.

6 Once you got that information, you didn't go back and try
7 to take -- and try to find out whether or not anything had been
8 done to clean Mr. Newton's hands or to otherwise sanitize his
9 hands that would account for the GSR sample being negative;
10 correct?

11 A. No. I didn't feel I needed to at that point.

12 MR. NISENBAUM: Thank you. No further questions.

13 THE COURT: Anything on that?

14 MR. MORIARTY: No. Thank you.

15 THE COURT: All right. Sergeant, you may step down.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Oh, wait. Don't step down.

18 Ms. Stone, I have a question. Grab the question, please.

19 Counsel, let me see you at sidebar.

20 (Sidebar conference held without the reporter.)

21 THE COURT: Okay, Sergeant. I have a couple more
22 questions for you.

23 THE WITNESS: Yes, Your Honor.

24 EXAMINATION OF CARDOZA

25 THE COURT: First, if gun residue was on Mr. Newton's

1 hands but not on Mr. Tindle's, how strong of an indication is
2 it that Mr. Newton fired the shots?

3 **THE WITNESS:** That -- that's a really good question,
4 and I -- I wish that an expert could give you a broad or very
5 detailed description of that.

6 So my understanding is that that gunshot residue is just
7 one piece of the totality of everything, that it's something
8 you can look at, but it's -- it's not conclusive in any way.

9 We've had cases where we know for absolute fact that a
10 certain person was the one that fired the shot, but another
11 person just in proximity could have just as much gunshot
12 residue on them as the actual shooter.

13 So, again, it's -- I can't -- I can't look at that and say
14 that that is definitive.

15 **THE COURT:** All right.

16 Any follow-up on that question?

17 **MR. ALLEN:** Yes, Your Honor, please.

18 **REDIRECT EXAMINATION**

19 **BY MR. MORIARTY:**

20 **Q.** Putting you in a bad position, but I have to ask you a
21 little bit more about gunshot residue. Okay?

22 **A.** Okay.

23 **Q.** Because you're not an expert, but I think you can explain
24 a little bit more.

25 What is your understanding of where gunshot residue comes

1 from and how it appears after a gun is shot?

2 **MR. NISENBAUM:** I would object as being beyond the
3 scope and beyond his -- his expertise as limited as it is.

4 **THE COURT:** Overruled, to the extent that you know.
5 If you don't, just say you don't know.

6 **THE WITNESS:** I can only give you the -- I guess the
7 elementary version, and that is when a gun is fired, the
8 gunshot powder that is fired from the bullet disperses the --
9 many minute -- like you can't even -- it's not something we can
10 see with our visible eye, and there's these particles that was
11 broken down into the definition described earlier as -- I
12 couldn't even tell you exactly what those definitions of those
13 particles were, but they -- it's like a cloud that is -- that
14 falls on hands, body, clothing within a certain proximity where
15 that gun was fired.

16 **BY MR. MORIARTY:**

17 **Q.** Going back to what you discussed before, have you seen
18 cases in which someone has not fired the gun, however you can
19 tell, whether it's by surveillance video or other ways, to
20 prove who the shooter is, yet that person who did not fire the
21 gun ends up with gunshot residue on their clothes, on their
22 hands or parts of their bodies based on their proximity to that
23 gun being fired?

24 **A.** Yes.

25 **Q.** And a little bit further, did you say -- and I don't --

1 I'm not sure if I heard you correctly.

2 Have there been instances where the opposite has taken
3 place, where you have had instances where you know someone is a
4 shooter, and for whatever reason, the gunshot residue kit does
5 not lead to the presence of gunshot residue on that person's
6 hands?

7 **A.** Yes. It goes both ways. That's why, you know, we'll take
8 samples, but very seldom do we actually submit it and have it
9 tested.

10 **Q.** Okay. Going back to a question asked before, because it
11 gets to the heart of it, your investigation, everything you
12 did, all the witnesses that you interviewed, was there any
13 indication besides this GSR that Mr. Newton was the shooter of
14 the SIG Sauer weapon?

15 **MR. NISENBAUM:** I would object, Your Honor. Beyond
16 the scope.

17 **THE COURT:** Sustained.

18 **MR. MORIARTY:** That's all the questions I have.

19 **THE COURT:** Any follow-up?

20 **MR. NISENBAUM:** Very, very briefly.

21 **RE CROSS-EXAMINATION**

22 **BY MR. NISENBAUM:**

23 **Q.** In the example you gave initially, the person shooting the
24 gun at another person and there is no GSR found on the other
25 person, you would expect there to be GSR found on the hand of

1 the person who fired the gun; correct?

2 A. Yeah. You would expect that.

3 Q. Okay.

4 A. Unless their hands were washed or cleaned.

5 Q. Or if they were wearing also gloves?

6 A. That could be true, too, if they had gloves they took off.

7 Q. If they had something that was covering and preventing GSR
8 from being deposited; correct?

9 A. That's correct.

10 Q. That's why you take GSR samples not from one area of the
11 hand but different facets of the hand; correct?

12 A. It's usually both the webbing of the hands where the --
13 your hand would be wrapped around the hammer of the firearm,
14 the base of it.

15 Q. Okay. And when you say "webbing," are you talking about
16 the areas kind of between your fingers?

17 A. Between the thumb and your pointer finger.

18 Q. Okay. And you take the palms?

19 A. No. It's usually just -- when they take samples, it's
20 usually just the top -- the top. That's why I refer to it as
21 the webbing.

22 Q. And you're talking about the top, and just for the record,
23 we have a jury here, but for the record, you're talking about
24 the top of the inside of your thumb, around through the inside
25 of the index finger?

1 **A.** Yes. That's correct.

2 **Q.** Down through the webbing?

3 **A.** Yes, sir.

4 **Q.** In between them?

5 **A.** Yes, sir.

6 **MR. NISENBAUM:** Thank you. No further questions.

7 **THE COURT:** Anything on that?

8 **MR. MORIARTY:** No, Your Honor.

9 **EXAMINATION OF CARDOZA**

10 **THE COURT:** So here's the next one. It's long so I
11 can repeat it if you want.

12 **THE WITNESS:** Okay.

13 **THE COURT:** Did you take steps to ascertain who the
14 pistol belonged to, and "pistol" referring to the pistol that
15 potentially shot the first two shots, and "belonged to" in
16 terms of who was carrying it prior to the fight, and if so, how
17 did you investigate that and what were your conclusions?

18 **THE WITNESS:** Okay. So I think the -- if I understand
19 correctly, the question is who had the -- maybe I'm off, but
20 who had the firearm -- what steps did I take to determine who
21 had the firearm prior to that shooting?

22 **THE COURT:** Right.

23 **THE WITNESS:** Okay. So, again, as an investigator, I
24 have to take the totality of everything, so that means I have
25 to -- I have to look at witnesses and evidence. I have to look

1 at -- I have to go through everything. Who first and foremost
2 witnessed it, who saw who with the gun, and based off witness
3 statements, I knew that Tindle was seen with the gun prior to
4 the shooting. And he was also the same one that was seen
5 shooting Mr. Newton, and so that -- that was directly from
6 witnesses. Okay?

7 And then I have to look at evidence and tell me what does
8 the evidence suggest, and that's where I have to take it a step
9 further and take DNA samples and things of that nature just to
10 confirm other things that I'm -- that I learned during the
11 investigation.

12 **THE COURT:** Any follow-up?

13 **MR. MORIARTY:** No.

14 **MR. NISENBAUM:** No, Your Honor.

15 **THE COURT:** Okay. Anything else? All right.

16 Now, Sergeant, you may step down.

17 **THE WITNESS:** Thank you, Your Honor.

18 **THE COURT:** Okay. Ladies and Gentlemen, let's go
19 ahead and take our lunch break, so we will stand in recess for
20 30 minutes. Your lunches -- hold on, Sergeant.

21 Your lunch is in the jury room for you. We will stand in
22 recess for 30 minutes with the jury.

23 (Proceedings were heard out of presence of the jury:)

24 **THE COURT:** Okay. You can stand down now. Thank you.

25 Can someone tell me how long we expect Wong to be?

1 **MR. MORIARTY:** Maybe 20 minutes.

2 **THE COURT:** Twenty minutes. And then do I have the --
3 where is the deposition transcript that you're going to read?
4 I'm trying to see if I've got that from the last time.

5 **THE CLERK:** This is the whole thing.

6 **THE COURT:** I don't want that one. I want the one
7 that is highlighted that they are going to read. You can keep
8 that.

9 Ladies and Gentlemen, we are going to stand in recess for
10 30 minutes if you want to go grab a quick bite.

11 **MR. MORIARTY:** Here is another one.

12 **THE COURT:** Can I just make a copy so I make sure I
13 have the right --

14 **MR. MORIARTY:** You can keep this one.

15 **THE COURT:** I'm sorry. Here it is. I found it.
16 Okay. Thank you.

17 All right. And give me estimates on closing so I know how
18 to take breaks here.

19 **MR. NISENBAUM:** 20 minutes, unless you are going to
20 dock me 15 minutes -- 20 minutes for mine and then Mr. Burris's
21 rebuttal.

22 **THE COURT:** And then Mr. Burris doesn't get one. Just
23 joking. I'm just joking.

24 **MR. BURRIS:** I know you were joking.

25 **MR. MORIARTY:** If -- I'm not positive. I think it's

1 45 to 55, but I'm not positive. Somewhere in that area.

2 **THE COURT:** So 20 minutes, 45, and then another --

3 **MR. BURRIS:** 20, 25.

4 **THE COURT:** Take your break. Thank you.

5 Mr. Moriarty, the 101D that you had marked up has not been
6 admitted.

7 **MR. MORIARTY:** Okay.

8 **THE COURT:** So do you want to offer that?

9 **MR. MORIARTY:** Right. As it's changed, correct.

10 **THE COURT:** So where is it?

11 **MR. MORIARTY:** I just gave it to -- I didn't give it
12 to you?

13 **THE COURT:** Unless you don't want -- do you not want
14 the unmarked one?

15 **MR. MORIARTY:** I want the marked one. Let me double
16 check.

17 **THE CLERK:** Here it is. It's in your paper. It has
18 the initials CT on it with the red, 101D. Does it get another
19 number?

20 **THE COURT:** So my question is do you want me to give
21 it a different designation, or do you want that -- or do you
22 want to replace it?

23 **MR. MORIARTY:** That is the piece of evidence. I don't
24 need -- I don't need two of them.

25 **THE COURT:** I'm just asking. I admitted -- once I

1 admit something, it cannot be changed.

2 **MR. MORIARTY:** I understand now.

3 **THE COURT:** And it's fine if you want to replace it,
4 but I want the record to be clear about what is going in.

5 **MR. MORIARTY:** Whatever is easiest. If it can stay as
6 it is and we can just amend that 101D is now marked as opposed
7 to previously being admitted as clean.

8 **THE COURT:** That's fine. So ordered. Okay. Thank
9 you.

10 If you could be back here at 12:35.

11 (Luncheon recess was taken at 12:15 p.m.)

12 **AFTERNOON SESSION**

12:40 p.m.

13 **THE COURT:** All right. Let's call the jury back in.

14 (Proceedings were heard in the presence of the jury:)

15 **THE COURT:** We are back in session. The record will
16 reflect that the jury is with us.

17 Defense, next witness.

18 **MR. MORIARTY:** The defendant calls Helena Wong.

19 **HELENA WONG,**

20 called as a witness for the Defendant, having been duly sworn,
21 testified as follows:

22 **THE WITNESS:** I do.

23 **THE CLERK:** Please be seated. And then adjust the
24 mic. Pull it toward you. And then please state your full name
25 and spell your last name.

1 **THE WITNESS:** Helena. Last name is W-O-N-G.

2 **THE COURT:** All right. Good afternoon, Ms. Wong.

3 **THE WITNESS:** Good afternoon.

4 **THE COURT:** You may proceed.

5 **MR. MORIARTY:** Thank you.

6 **DIRECT EXAMINATION**

7 **BY MR. MORIARTY:**

8 **Q.** Good afternoon, Ms. Wong.

9 **A.** Good afternoon.

10 **Q.** Where do you work?

11 **A.** I work for the Oakland Police Department Crime Department
12 Lab.

13 **Q.** How long have you worked for the Oakland Police Department
14 Crime Lab?

15 **A.** I have been there nine years, and eight years as a
16 criminalist.

17 **Q.** What is your current position with the crime lab?

18 **A.** I'm a criminalist, which is another word for forensic
19 scientist, at the crime lab.

20 **THE COURT:** I'm going to have you scoot just a little
21 closer to that mic so we can hear you a little bit better.

22 Okay? Thank you.

23 **BY MR. MORIARTY:**

24 **Q.** In your position as a criminalist at the crime lab, do you
25 forensically analyze DNA?

1 **A.** Yes.

2 **Q.** How long have you done that for?

3 **A.** I've done that for eight years.

4 **Q.** When you do your work on DNA, do you physically examine
5 evidence for the presence of biological material?

6 **A.** Yes.

7 **Q.** Could you briefly describe your educational background
8 relative to your work?

9 **A.** Yes. I have a Bachelor's of Science degree in chemistry
10 from U.S San Diego and a Master's of Science degree in forensic
11 science from U.C. Davis.

12 **Q.** Is the Oakland Police Department crime lab accredited?

13 **A.** Yes.

14 **Q.** Could you briefly describe what it means for the
15 laboratory to be accredited?

16 **A.** For the lab to be accredited, we have to have protocols,
17 procedures and policies in place to make sure that the work
18 that we're doing is of high scientific standards, meaning good
19 standards, and we get audited by outside agencies to make sure
20 that we are routinely still meeting those standards.

21 **Q.** How often is the accreditation reviewed by those outside
22 agencies?

23 **A.** We get, I believe, reviewed every other year by an outside
24 agency, and every other year we do an internal audit.

25 **Q.** Do you have formal training with respect to DNA analysis?

1 **A.** Yes.

2 **Q.** Could you briefly tell us your formal training with
3 respect to DNA analysis?

4 **A.** I was trained in the forensic biology unit, and when I was
5 hired to do the criminalist position, we had an in-house
6 training program where I performed lots of training samples and
7 practices on the DNA analysis process. I also attended courses
8 held by outside agencies such as the California Criminalistics
9 Institutes.

10 **Q.** And you mentioned DNA analysis. The how many times have
11 you conducted DNA analysis in your position with the Oakland
12 Police Department for the last eight years?

13 **A.** Thousands of times.

14 **Q.** Have you qualified as an expert witness in court in the
15 area of forensic biology and DNA analysis?

16 **A.** Yes.

17 **Q.** How many times have you qualified in court, let's say, not
18 in federal court but in state court -- how many times have you
19 qualified as an expert in forensic biology and DNA analysis?

20 **A.** Twenty times.

21 **Q.** And have you testified as an expert in federal court?

22 **A.** Yes.

23 **Q.** How many times?

24 **A.** One time.

25 **MR. MORIARTY:** Your Honor, at this point, the

1 defendant would ask that Ms. Wong -- the defendant would offer
2 Ms. Wong as an expert in forensic biology and DNA analysis.

3 **MR. NISENBAUM:** No objection.

4 **THE COURT:** She is admitted as such.

5 **BY MR. MORIARTY:**

6 **Q.** What does DNA stand for?

7 **A.** DNA stands for deoxyribonucleic acid.

8 **Q.** Where is it found in the human body?

9 **A.** It's found in cells that have a nucleus and in-common
10 bodily fluids such as sperm, saliva and blood.

11 **Q.** Does DNA differ from person to person?

12 **A.** Yes.

13 **Q.** Within a specific person, does the DNA vary? In other
14 words, would my blood be different from my saliva?

15 **A.** No.

16 **Q.** Is each person's exact DNA sequencing unique?

17 **A.** Yes.

18 **Q.** Okay. When you described the thousands of times you have
19 done your DNA analysis, could you briefly describe what that
20 means to do a DNA analysis?

21 **A.** Do you want me to briefly go over the process of DNA
22 analysis?

23 **Q.** Yeah?

24 **A.** So the first thing we do when we receive evidence to
25 examine, we'll examine the evidence to see if there is any

1 staining or any areas that might potentially contain biological
2 material, and then we would take a sampling of it either by
3 swabbing or by cutting. And the first step in the DNA analysis
4 process is called digestion, which is to break open the cells
5 to release the DNA from the nucleus.

6 And then the next step is extraction where we purify that
7 sample for just pure DNA since that's the part that we're
8 interested in.

9 The next step is quantitation, which is where we determine
10 how much DNA is present in that sample.

11 The next step is amplification where we make millions of
12 copies of DNA of a particular area of the DNA that we're
13 interested in.

14 And then finally, we have DNA typing, which is the process
15 of getting the DNA type of that person or of that sample.

16 **Q.** Okay. And the seven steps that you just walked through,
17 you can perform on pieces of evidence, whether it be clothing,
18 a firearm, or whatever that's presented to you to see if you
19 can find the presence of anyone's biological material on that
20 evidence; is that correct?

21 **A.** Yes.

22 **Q.** I want to ask you generally about firearms. Okay?

23 During your eight years with the Oakland Police
24 Department, have you been asked to examine firearms for the
25 presence of DNA?

1 **A.** Yes.

2 **Q.** Could you give us an estimate of how many times such a
3 request has been made, and that's to examine this firearm and
4 determine if anyone's biological material is on it.

5 **A.** I would say hundreds of times.

6 **Q.** When -- when that request is made to you, what parts of
7 the firearm are you going to go ahead and do your examination
8 on?

9 **A.** So the first thing I would do is to look if there's any
10 visible staining that I can see. If I don't see any staining,
11 then I'm going to typically -- I'm going to take samples from
12 areas that people typically handle when they're handling a
13 firearm.

14 So, for example, a lot of times we would swab the grips
15 because that's where you would have to hold in order to shoot
16 the firearm. The slide you also would have to handle in order
17 to rack the slide and load the chamber. Depending on the
18 surface of the trigger, sometimes we would swab the trigger as
19 well, or just other areas that a person would expect -- be
20 expected to touch.

21 **Q.** During your analysis, you used the phrase "multiple
22 donors."

23 **A.** Correct.

24 **Q.** And you've used that phrase many times during the time
25 you've been with the crime lab; correct?

1 **A.** Yes.

2 **Q.** What is meant by the phrase "multiple donors" in the area
3 of biological material found, for example, on a firearm?

4 **A.** So going back, if you have just one person touching a
5 sample and I was able to get a DNA profile from just that one
6 person, then we call that a single-source sample, meaning only
7 one person contributed to that sample.

8 There are many types of evidence samples where more than
9 one person might have touched the evidence, and in that case,
10 we would detect the presence of more than one person in that
11 sample, and that's where the multiple donors is used.

12 **Q.** Again, generally speaking, with respect to the time that
13 you've worked with the Oakland Police Department examining
14 firearms, would you say it's usual or unusual to find multiple
15 donors on the firearms that you examine?

16 **A.** I would say it's pretty usual to find multiple donors.

17 **Q.** Can you explain that?

18 **A.** So firearms is a type of evidence or an item that could be
19 passed around from person to person. It just depends on the
20 way the person handles their gun. So if it's a gun that you
21 own and you don't want to let anyone else touch it, then the
22 possibility of finding someone else is a lot lower, whereas if
23 it's a gun that you know you might share with another friend or
24 friends and you know you take turns shooting it, then there's a
25 good chance that, you know, you'll have more than one person's

1 DNA on there.

2 Q. What is meant by the phrase or the term "major donor"?

3 A. The word "major donor" means it's going back to the fact
4 that there is more than one person's DNA contributing to the
5 sample, and the major donor is the person who is contributing
6 the majority of the DNA to that sample.

7 Q. And the next question would be what's meant by the term
8 "minor donor"?

9 A. The minor donor would mean the person who is contributing
10 less DNA to that sample.

11 Q. Okay. I want to focus on what you did here. Okay?

12 A. Okay.

13 Q. What were you asked to do in this case?

14 A. I was asked to examine swabs of a firearm and a magazine
15 for the presence of biological material.

16 Q. What was the Oakland Police Department crime report number
17 that corresponded with your work in this case?

18 A. It is 18-000494.

19 Q. When you were asked to do the work, that was at the
20 request of Sergeant Michael Cardoza of the Oakland Police
21 Department; correct?

22 A. Correct.

23 Q. My law firm did not hire you to do your work; correct?

24 A. Yes.

25 Q. And you were asked to examine swabs -- swabs that were

1 connected to the gun; is that correct?

2 **A.** Yes.

3 **Q.** Okay. And when you get a request to examine swabs, what
4 does that mean? What are you going to do?

5 **A.** So instead of looking at the actual firearm, swabs that
6 have already been previously collected from areas of the
7 firearm are examined instead, so I'll look at swabs that
8 basically looks like a cotton swab.

9 **Q.** Like a Q-tip?

10 **A.** Yes.

11 **Q.** And when you look at those swabs, it's your understanding
12 that an evidence technician has already used that Q-tip on
13 certain parts of the subject firearm?

14 **A.** Yes.

15 **Q.** Okay. When you tried to -- when you did your process of
16 examining -- excuse me.

17 The examination and the swabbing had already been done
18 before you got involved in this firearm; correct?

19 **A.** Right.

20 **Q.** Okay. So you went to your process of digestion,
21 extraction, quantification, and amplification to see if you
22 could do the DNA typing; correct?

23 **A.** Yes.

24 **Q.** What different areas -- in which different areas had that
25 gun been swabbed before you became involved in your work?

1 **A.** So there were four swabs that were collected from the
2 firearm. The first one was from the grips. The second one was
3 from the trigger. The third is from the rear of the slide.
4 And the fourth one is the hammer.

5 **Q.** And you understand that firearm to be a SIG Sauer;
6 correct?

7 **A.** Yes.

8 **Q.** What, if anything, could you do with your analysis of the
9 swabs that had already been done by the evidence technician?
10 What did you learn?

11 **A.** Could you repeat or rephrase that question?

12 **Q.** Sure. You went to the property section and retrieved the
13 swabs that had already been done, already been swabbed, of
14 those areas of the gun that you described; correct?

15 **A.** Yes.

16 **Q.** Why don't you explain to the jury how you were able -- how
17 you are able -- not in this instance, but how you are able to
18 develop a profile of an individual based on a swabbing, in this
19 case, of a gun? Generally how does that work?

20 **A.** So typically we would take a portion of the swab. In this
21 case, I took half of the swab and subjected it through the
22 entire DNA analysis process that I briefly described earlier.

23 **Q.** Okay. And were you able to develop a profile for any of
24 the swabs that had been done by the initial evidence
25 technician?

1 **A.** So results were obtained, but I wasn't able to develop an
2 individual profile from the evidence samples.

3 **Q.** Okay. Explain that to us. When results were obtained,
4 what does that mean?

5 **A.** So there was DNA detected on all of the samples. The
6 hammer actually didn't have quite enough DNA for us to go
7 forward to the DNA typing process. So we were able to do DNA
8 typing on the grips, the slide, and the trigger.

9 Results were obtained, meaning I actually got DNA -- or a
10 mixture, DNA mixture, from at least four people from each of
11 the areas, but then due to the -- just how complex it is and
12 how many people were contributing to it, I wasn't able to
13 independently figure out which -- the DNA profile for each of
14 those individuals. So in that case, I wasn't able to develop a
15 profile for any single individual among the four individuals.

16 **Q.** Okay. And if you were able to develop a profile, you
17 would be able to compare that profile of the unknown person on
18 the gun to a known person; correct?

19 **A.** Yes.

20 **Q.** But because the levels of DNA were not high enough, you
21 were unable to develop that profile from the swabs that were
22 done by the technician; correct?

23 **A.** Yes.

24 **Q.** Did you next go ahead and swab the gun yourself?

25 **A.** I did.

1 Q. Did you use the same process of examination and swabbing
2 that you described earlier?

3 A. Yes.

4 Q. Okay. And did you swab the same areas of the firearm
5 yourself with that Q-tip?

6 A. I swabbed the grips again, and then I also swabbed the
7 slide also, and I swabbed certain buttons and releases that are
8 on the gun.

9 Q. When you did your swabs of the gun yourself personally,
10 before you did that, you examined the firearm visually for the
11 evidence of any kind of stains; correct?

12 A. Yes.

13 Q. And did you see evidence of any kind of stains on that
14 firearm, the SIG Sauer, when you did that examination?

15 A. I did not.

16 Q. And when we go back to the biological material that our
17 body secretes, when you're looking for a stain, is it -- is
18 it -- does it go hand in hand that if you see a stain, it could
19 connect with the possible presence of blood?

20 A. It depends on the coloring of the stain.

21 Q. Okay. Make it simple here. When you did your swabbing of
22 the firearm, you personally -- you personally -- did you see
23 anything indicative that the biological material could be
24 blood?

25 A. I did not.

1 Q. I want to just focus on your swabbing, your personal
2 swabbing of the gun on the grips. Okay?

3 A. Okay.

4 Q. All right. When you swabbed the gun with that Q-tip on
5 the grips of the SIG Sauer, were you able to obtain sufficient
6 quantities of DNA to develop a profile?

7 A. Yes.

8 Q. A stupid question: When you say "the grips," that's where
9 someone would hold the gun if he or she is holding it the
10 proper way?

11 A. Yes.

12 Q. And you testified that the biological material that you
13 were able to obtain off the gun was not indicative of blood;
14 correct?

15 A. Correct.

16 Q. What did you learn when you went through your process of
17 swabbing, digestion, extraction, quantification, amplification
18 and typing? What were you able to develop from that -- from
19 the grips?

20 A. The grips, once again, like the previous swabbing that was
21 taken, had a mixture of at least four people contributing to
22 that sample, but in this case, the -- there was one particular
23 person or donor that was contributing a high enough quantity of
24 DNA that I -- his type was distinguishable from the rest of the
25 three people, and so in that situation, I was able to develop a

1 profile for that major donor.

2 Q. And that person you could tell was a man?

3 A. Correct.

4 Q. And you described that as the major donor; correct?

5 A. Yes.

6 Q. Could you break down for us the quantity of DNA on the
7 grips for each of the four donors, the major donor and the
8 three other donors?

9 A. So the major donor was contributing approximately 80
10 percent to that sample, and the minor donors, at least three of
11 them, were contributing about 20 percent in totality.

12 Q. Could you describe -- I want to concentrate now on the
13 major donor. Okay?

14 A. Yes.

15 Q. Could you describe to the jury what a statistical
16 frequency means in your work?

17 A. Every time we develop a profile, we want to give weight to
18 that profile, meaning we will perform a statistical frequency
19 calculation to see how rare or common that particular profile
20 is. That way if we were to do any sort of comparison to a
21 known sample and we say they are included or excluded, the
22 statistical frequency would show how strong or how weak that
23 inclusion is.

24 Q. Okay. And were you able to develop a statistical
25 frequency for the major donor on the grips of the SIG Sauer?

1 **A.** Yes.

2 **Q.** What was the statistical frequency?

3 **A.** The DNA -- the major donor DNA profile was expected to
4 occur approximately once in 172 decillion members of the
5 population.

6 **Q.** How many zeroes is that, decillion?

7 **A.** That is 33 zeroes.

8 **Q.** What does that mean? In other words, I'm sure you've been
9 asked this question before, but how many people are in the
10 world?

11 **A.** There is approximately, I think, 7 billion people in the
12 world right now.

13 **Q.** And obviously 172 decillion with 30 zeroes is a larger
14 number than that; correct?

15 **A.** Yes. 33 zeroes.

16 **Q.** Do those numbers correspond at all, or how do you explain
17 that?

18 **A.** Could you rephrase that question?

19 **Q.** Sure. Sure.

20 I'm sure you've been asked this question, that the
21 statistical frequency of the major donor in the population,
22 you've testified, is 172 decillion; right?

23 **A.** Right.

24 **Q.** Which is 30 zeroes. It's a humungous number; right?

25 **A.** 33.

1 Q. What's that? 33. To be accurate, 33.

2 And the population of the world is 8 billion; correct?

3 A. 7 or 8.

4 Q. 7 or 8. Close enough. Okay. Do those two numbers, do
5 they correspond with each other or how do they -- do they
6 co-exist?

7 A. Well, 172 decillion is significantly larger than 7
8 billion. I'm not sure if that's where you're going.

9 Q. Okay. I guess I'll just stick -- it always confuses me,
10 but, anyway, we will stick with that number is a lot larger
11 than 7 or 8 billion.

12 So now for the grips on the gun, you have the presence of
13 someone -- you have a major donor; correct?

14 A. Correct.

15 Q. And now because you're able to develop a profile, you can
16 compare that unknown person on the grips to someone who is
17 known; is that correct?

18 A. Yes.

19 Q. And did you do that in this case?

20 A. I did.

21 Q. Were you able to compare the profile that you created from
22 the grips of the gun to a DNA card from Sahleem Tindle?

23 A. Yes.

24 Q. What do you do when you get that DNA card? What's the
25 process that you have to go through in order to make that

1 comparison to the grips to -- to what you learned from the
2 grips to the DNA card?

3 **A.** So we deal with a certain type of sample called reference
4 sample. Very often in our lab, a reference sample is a known
5 sample that was collected from a particular individual. So it
6 could either be saliva or it could be blood, and we will
7 subject that sample through the same DNA analysis process, and
8 so at the end of it, when we get a DNA profile, we know that
9 that's the DNA profile of that particular individual that it
10 was collected from.

11 **Q.** Okay. And you did that for the DNA card for Mr. Tindle;
12 correct?

13 **A.** Yes.

14 **Q.** When you did your analysis and your comparison between the
15 DNA card and the swabs from the grip, what were you able to
16 learn?

17 **A.** When I compared the DNA profile from Sahleem Tindle to the
18 major donor, my conclusion was that he is included as that
19 major donor.

20 **Q.** What does that mean?

21 **A.** That means that when -- in our DNA analysis process, we
22 look at 26 different locations on the DNA chromosome, and out
23 of those 26 different locations, there is a type of that person
24 at each of those locations, so I compared the type at each of
25 those locations between the unknown profile and the known

1 profile of Sahleem Tindle, and, you know, saw that it was the
2 same at every location.

3 **Q.** I want to ask you some questions about the 20 percent of
4 the biological material on the grips. Does that make sense?

5 **A.** Yes.

6 **Q.** Because what you discussed is that what we know is that 80
7 percent equals the major donor for the grips; correct?

8 **A.** Correct.

9 **Q.** And your analysis, based on what you pulled from the grips
10 and compare that to Mr. Tindle, is that 80 percent of the grips
11 equal Mr. Tindle; correct?

12 **A.** He was included, yes.

13 **Q.** Now, when we talk about the 20 percent, that was divided
14 between three donors; correct?

15 **A.** It was a minimum of three donors.

16 **Q.** Okay. In this case, we've received evidence that another
17 individual was involved in this incident by the name of
18 Mr. Rayvell Newton. Okay? Did you ever receive a reference
19 sample for a person named Rayvell Newton?

20 **A.** No.

21 **Q.** I want you to assume that you had. Okay? If you had
22 received a similar DNA sample, whether it be a DNA card or a
23 swab of Mr. Newton's mouth, would you have been able to compare
24 and match that known sample, either the DNA card or the swab of
25 Mr. Newton, to the 20 percent of the material, the biological

1 material, that was left on the grips of the gun?

2 **A.** No. The reason for that is because we only do comparisons
3 of profiles that we actually were able to determine or develop.
4 And the reason for that is those are the only types of profiles
5 that we're able to calculate a statistical frequency for.
6 Anything that we aren't able to determine a profile for, we
7 can't calculate a statistical frequency for so it wouldn't be
8 fair to do any sort of comparison to those samples because then
9 I wouldn't be able to tell you how strong or weak that
10 inclusion is.

11 **Q.** Okay. Going back to the 80 percent and the major donor,
12 again, that's 172 decillion, the frequency in the population;
13 correct?

14 **A.** Yes.

15 **Q.** And you testified that that includes Mr. Tindle because
16 his DNA matches it, all the 26 locations; correct?

17 **A.** Correct.

18 **Q.** Could that also be an individual, a different individual?

19 **A.** It's highly unlikely.

20 **Q.** Okay. If --

21 **A.** Or let me further elaborate on that.

22 **Q.** Yeah.

23 **A.** The reason why I say it's highly unlikely is the
24 statistical frequency of 1 in 172 decillion means this profile
25 is so rare that I'm only expecting to see it one time in a

1 population of 172 decillion people, which is a huge amount of
2 people, and so it's not very likely that I'm going to see that
3 twice.

4 Q. What if Mr. Tindle had a twin?

5 A. It would have to be an identical twin.

6 Q. And if Mr. Tindle had an identical twin, would those 26
7 spots, those locations, would those match up?

8 A. Yes.

9 Q. And if it's someone unrelated, that gets us back to the
10 highly unlikely?

11 A. Yes.

12 MR. MORIARTY: Thank you. That's all the questions I
13 have.

14 THE COURT: Cross?

15 CROSS-EXAMINATION

16 BY MR. NISENBAUM:

17 Q. Good afternoon --

18 A. Good afternoon.

19 Q. -- Ms. Wong.

20 A. Hi.

21 Q. Were you -- you were never provided Mr. Newton's DNA to
22 compare?

23 A. No. When I -- looking back at my notes, when I was
24 starting the analysis, the reference of Mr. Newton was not
25 available.

1 Q. But you don't know -- was it -- did you at some point
2 request his DNA?

3 A. I did not. I only perform analysis on things that were
4 requested of me, so if it wasn't available or requested, I
5 don't then go back and do further requests.

6 Q. Is it true that DNA cannot tell you who fired a gun?

7 A. Yes.

8 Q. That means that DNA -- a person's DNA being on a gun can
9 tell you that the person touched the gun; correct?

10 A. Correct.

11 Q. It doesn't tell you what they did with it?

12 A. Correct.

13 Q. In this case, there were at least four people who touched
14 this gun?

15 A. Yes.

16 Q. And it could have been a lot more?

17 A. Yes.

18 Q. And it doesn't tell you when the person touched the gun;
19 correct?

20 A. Correct.

21 Q. For example, a person could have had the gun and left all
22 kinds of DNA on it, been a major donor. The gun could have
23 been in another person's possession very briefly, and they may
24 not have left enough DNA on it to develop a profile; correct?

25 A. Correct.

1 Q. Okay.

2 Now, did you amplify the DNA samples that you -- that you
3 took yourself?

4 A. Yes.

5 Q. Okay. I'm not sure if I heard that. Can you explain that
6 process?

7 A. The amplification process?

8 Q. Yes.

9 A. Amplification is where -- like I mentioned earlier, we're
10 interested in 26 different locations on the DNA strand, and so
11 the amplification process is a process where we make millions
12 of copies of those specific 26 different locations.

13 Q. And was this from the swabs that you had taken yourself?

14 A. Yes.

15 Q. So when you took the swabs, you didn't have enough DNA to
16 develop a profile without doing the amplification; correct?

17 A. Correct. So the standard process for a DNA analysis is to
18 do the amplification process, and that's where we get enough
19 DNA to do any sort of forensic DNA analysis.

20 Q. Okay. What does it mean that the profile is not eligible
21 for entry into CODIS?

22 A. CODIS, spelled C-O-D-I-S, stands for the Combined DNA
23 Index System. It's a DNA database that has a lot of the DNA
24 profiles from different evidence samples from all over the
25 city, state, and nation. And so eligibility to enter a profile

1 into CODIS is based on whether or not it was directly collected
2 from an evidence that was related to a crime.

3 **Q.** Okay. So because -- I'm sorry. The reason why this --
4 strike that.

5 Was there a reason why the DNA sample in this case was
6 not -- was not eligible for entry into CODIS?

7 **A.** Yes. So the reason why this firearm was not eligible for
8 entry into CODIS is because it was collected at the scene near
9 the location of an individual, so if -- let's just say that
10 particular individual that it was next to, we find their DNA on
11 there. It doesn't -- it's not necessarily a crime because we
12 know that he was there in that location.

13 It would be a different story if a shooting happened or a
14 homicide happened and there was a gun left next to the body and
15 we have no idea who left that gun behind. So in that case,
16 that gun is directly related to a crime and so any profile that
17 gets generated from that gun would be eligible for CODIS.

18 **Q.** Okay. I take it you were not able to determine whether
19 Mr. Newton touched this gun or not; correct?

20 **A.** Correct.

21 **Q.** And you're not here offering any testimony that would say
22 that Mr. Newton did not touch this gun; correct?

23 **A.** Correct.

24 **Q.** And, of course, you're not here saying that Mr. Newton did
25 not fire this gun; correct?

1 **A.** Correct.

2 **Q.** You talked about the 1 in many decillion. That number was
3 too high. It boggles my mind.

4 What you're saying there is that basically unless you have
5 an identical twin, we all have individual different DNA;
6 correct?

7 **A.** Yes.

8 **Q.** So what DNA was found on the slide?

9 **A.** The results from the slide was a mixture of at least four
10 donors.

11 **Q.** Okay. Was there a major donor on the slide?

12 **A.** No.

13 **Q.** But if I understand correctly, there were -- other than
14 the slide, there were three minor donors and one major donor;
15 correct?

16 **A.** On the grip.

17 **Q.** Right. On the grip.

18 **A.** Yes.

19 **Q.** And in total, there were what appear to be four separate
20 donors in total to the DNA found on the gun; correct?

21 **A.** Yes.

22 **Q.** Okay. Now, you indicated that you didn't see any blood
23 stain on the gun; correct?

24 **A.** Correct.

25 **Q.** Did you test the gun for blood?

1 **A.** No.

2 **Q.** Okay. Are you here testifying that there was no blood on
3 the gun?

4 **A.** I am here to say that I didn't see any stains that were
5 consistent with the appearance of blood.

6 **Q.** Okay. How about saliva?

7 **A.** I did not test for the presence of saliva.

8 **Q.** Does saliva carry DNA?

9 **A.** Yes.

10 **Q.** So if I -- and that's how you get DNA; right?

11 **A.** Correct.

12 **Q.** How you get the sample, is by swabbing the cheek?

13 **A.** Yes.

14 **MR. NISENBAUM:** One moment, please.

15 **Q.** What about the buttons on a gun?

16 **A.** Are you specifically referring to the buttons I referred
17 to?

18 **Q.** Yes.

19 **A.** I swabbed three different buttons on the gun: The
20 magazine release button, the slide stop, and the decocker.

21 **Q.** The what?

22 **A.** The decocker.

23 **Q.** Oh. Is that on the hammer?

24 **A.** It's near that area.

25 **Q.** Okay. And was there any DNA recovered from the buttons?

1 **A.** Yes.

2 **Q.** And was -- were you able to determine whether Mr. Tindle's
3 DNA was on the buttons?

4 **A.** The DNA from the button resulted in a mixture of at least
5 three individuals that I was not able to individually sort out
6 their profiles from, so I wasn't able to do any comparison to
7 the results from the buttons.

8 **Q.** Now, if a person handles a gun -- this may be beyond your
9 expertise. Let me know if it is.

10 If a person handles a gun on a daily basis and they touch
11 the whole gun with their hand and their hand is normal, it's
12 not gloved or anything, would you expect their DNA to be all
13 over the gun?

14 **A.** Yes.

15 **Q.** And you would expect their DNA to be all over the gun as a
16 major profile all over the gun; correct?

17 **A.** If they're the person that's touching it most of the time,
18 then, yes.

19 **MR. NISENBAUM:** Okay. I don't think I have any other
20 questions. Hold on.

21 Thank you. No further questions.

22 **THE COURT:** Any redirect?

23 **MR. MORIARTY:** Just briefly.

24 **REDIRECT EXAMINATION**

25

1 **BY MR. MORIARTY:**

2 **Q.** Ms. Wong, you were just asked about someone who handles
3 the gun -- handles the gun every day, something to that effect.
4 Did you hear that?

5 **A.** Yes.

6 **Q.** I want to ask you -- say I have a gun at home and I'm the
7 only person that touches it. I clean it. I take it to the
8 range. I bring it back. I clean it. I put it in. I'm the
9 only person who touches it. Who are you going to expect to see
10 on that firearm if you were able to do a DNA analysis and swab
11 it?

12 **A.** So if you mentioned cleaning, if you just cleaned the gun
13 and you have wiped off all the DNA that's on there, I probably
14 wouldn't expect to find much DNA on there at all. If there was
15 DNA on there, then I would expect it to be the person who is
16 the person handling it.

17 **Q.** Okay. And assume -- take the cleaning out. Just I get
18 the gun. I purchase it. I put it in my safe at home. I'm the
19 only person who touches it from the firing range, shooting
20 range, back to the safe, and I come and you to go ahead and
21 swab the gun and analyze it. What do you expect to see on that
22 gun?

23 **A.** I would expect to see that person's DNA.

24 **Q.** Okay. Now that gets me back to this idea of major donor
25 and minor donor that you were just asked about, and I'm a

1 little confused. Okay?

2 **A.** Okay.

3 **Q.** You testified earlier that it's not unusual to find
4 multiple people on guns that you test for the Oakland Police
5 Department Crime Lab for the presence of biological material.
6 Is that what you testified to?

7 **A.** Yes.

8 **Q.** Explain what that means, why it's not unusual to see
9 multiple people on a gun.

10 **A.** So going back to just how the gun is handled and how it's
11 passed around, a lot of the guns that we see in the city of
12 Oakland are guns that belong to individuals that don't
13 necessarily, first of all, clean the guns very often, and it
14 gets passed around between different individuals, and so that's
15 why, in most of the gun cases that we see, a lot of times we'll
16 see more than one person's DNA on there.

17 **Q.** And when you happen to see a gun, it's because the
18 investigator believes that that gun was involved in a crime;
19 correct?

20 **A.** Yes.

21 **Q.** Okay.

22 That's all the questions I have.

23 **THE COURT:** Anything on that? Recross?

24 **MR. NISENBAUM:** No.

25 **THE COURT:** Okay.

1 Ms. Wong, you may step down. Oh, wait.

2 You know, I don't know why I just don't look over.

3 (Sidebar conference held and not reported.)

4 **THE COURT:** Okay, Ms. Wong. Just a few more questions
5 for you.

6 **THE COURT:** How easy is it for a person touching a gun
7 to leave a significant DNA trace?

8 **THE WITNESS:** So to answer that question, it really
9 depends on, I guess, the status of your hands. So if you wash
10 your hands very often, like we're all doing nowadays, you're
11 probably going to get rid of a lot of the DNA that's been left
12 behind by your hand, either by sweating or just touching your
13 face and things like that. But if you tend to not leave -- you
14 tend to not wash your hands very often or let's say you just
15 exercised and so you're sweating profusely, then the chances
16 that you are going to leave DNA behind just by touching
17 increases, so it really just depends on how much DNA there is
18 on your hand at the moment.

19 **THE COURT:** Can someone holding a gun for a short
20 period of time leave a bigger DNA trace than it's long-term
21 owner, and if so, in what kind of circumstances?

22 **THE WITNESS:** I would say it's usually unlikely. If
23 it's all just touch DNA, it's very unlikely that someone who
24 touched it for a very short amount of time would be leaving
25 significantly more DNA than the person who has routinely held

1 the gun. There are situations where that can happen.

2 So, for example, if the person is -- the person who is
3 touching it for the short amount of time -- let's just say he
4 had a cut on his finger and he was bleeding. There is a lot of
5 DNA in blood, and so even just touching for a short amount of
6 time, you could leave behind more DNA than the person who has
7 just been touching it with their skin cells, which doesn't
8 leave as much DNA behind as blood.

9 **THE COURT:** Okay. And can you estimate who is the
10 long-term owner of a gun based on where and how much DNA is
11 present on the gun?

12 **THE WITNESS:** We typically don't like to make that
13 sort of conjecture just because there's different situations
14 that can arise as to how much DNA gets left behind. I mean,
15 there's correlations and likelihood of the person who is
16 contributing more of the DNA under a normal just touching basis
17 is probably the person who handled the most, but like I said,
18 you know, just depending on if that person was bleeding at the
19 time or sweating profusely or whatnot, there is many reasons
20 that could change that, so we don't like to make that sort of a
21 assumption.

22 **THE COURT:** Okay. Any follow-up with respect to those
23 questions?

24 **MR. NISENBAUM:** No, Your Honor.

25 **THE COURT:** Not your turn.

REDIRECT EXAMINATION

BY MR. MORIARTY:

Q. Just a follow-up question on the third question that you just answered about your response where it says you said the difference between just touching it or -- excuse me -- the person who is handling it the most and the likelihood that that person who is handling it the most is going to leave the most DNA behind. Can you explain that further in the context of your work in this case.

A. I'm not sure if I'm answering it correctly, but typically the person who is handling it the most, meaning they've touched it the most amount of times, let's just say just from like a theoretical standpoint, every time you touch the gun, you leave ten percent of DNA behind. So the more times you touch it, then the amount of DNA, even though each time is very little, you're increasing the amount of DNA that you're leaving behind as a total unless that gun gets cleaned or whatnot. But if it hasn't been cleaned and it's just staying the way it is, then the more you touch it, the more times you've handled it, you are leaving more DNA behind on it.

MR. MORIARTY: Thank you.

THE COURT: Anything -- any follow up? Mr. Nisenbaum.

MR. NISENBAUM: Could I have ten seconds just to think?

RECROSS-EXAMINATION

BY MR. NISENBAUM:

Q. Are you given any evidentiary basis of -- for example, are you given any account of how DNA got left behind when you do your analysis to help guide you where to look?

A. It depends on the situation.

Q. Okay. That wasn't the case in this one, was it?

A. No.

Q. Okay. So in this one, you don't have any idea who handled it or for how long; correct?

A. Correct.

Q. You have no idea if it was cleaned or not cleaned?

A. Correct.

Q. You know obviously it wasn't totally cleaned before you examined it; correct?

A. Yes.

Q. And you don't know how long the DNA had been on there for; correct?

A. Correct.

MR. NISENBAUM: No further questions. Thank you.

THE COURT: Mr. Moriarty, anything on his follow-up?

MR. MORIARTY: No.

THE COURT: Okay. Now, Ms. Wong, you may step down.

Thank you.

Okay. Ladies and Gentlemen, the next piece of evidence

1 comes from a deposition. A deposition is the sworn testimony
2 of a witness taken before trial. The witness is placed under
3 oath to tell the truth, and lawyers for each party may ask
4 questions. These questions and answers are recorded. When a
5 person is unavailable to testify at trial, the deposition of
6 that person may be used at trial.

7 Here the deposition of Demorea Evans was taken on
8 May 22nd, 2019. Portions of it will be read to you today.
9 Insofar as possible, you should consider deposition testimony
10 presented to you here in court in lieu of live testimony in the
11 same way as if the witness had been present to testify.

12 However, do not place any significance on the behavior or
13 tone of voice of any person reading the questions or answers.
14 I believe in this case --

15 **MR. ALLEN:** I'm going to be Mr. Demorea Evans.

16 **THE COURT:** Mr. Allen is going to be reading the
17 answers that Mr. Evans gave, and obviously Mr. Allen is not
18 Mr. Evans. Okay? All right.

19 So just -- you may sit at the stand, Mr. Allen.

20 Just a reminder to the lawyers and Mr. Allen in the chair,
21 I need you to explicitly state question from the deposition and
22 then answer, so that the transcript is clear that this is being
23 read from the deposition as opposed to your own independent
24 questions and answers here in court.

25 You may proceed.

1 **MR. MORIARTY:** Thank you.

2 "Q. Mr. Evans, please state and spell your first and last
3 name.

4 "A. Demorea, D-E-M-O-R-E-A. Last name Evans, E-V-A-N-S.

5 "Q. Mr. Evans, have you ever been deposed before at
6 deposition?

7 "A. No.

8 "Q. You started off with a court reporter gave you an
9 oath. You took an oath to tell the truth. It's the same kind
10 of oath you would take in a courtroom in front of a judge or a
11 jury. The fact that -- the fact we're in my office in a
12 conference room doesn't change the effect of that oath. Do you
13 understand that?

14 "A. Uh-huh.

15 "Q. Yes?

16 "A. Yes.

17 "Q. So why don't you just tell me about -- you own
18 Upper Kutz Barber Shop?

19 "A. No. At the time it was owned by the other barber.

20 "Q. Okay. Do you still cut hair at Upper Kutz Barber
21 Shop?

22 "A. No. I'm doing -- I'm working there part time, but I'm
23 working not -- more so on some custom clothing, shoes, stuff
24 that I just launched.

25 "Q. Cool. And that's going into business for yourself?

1 "A. Yes.

2 "Q. Good for you. Can you tell me the address of
3 Upper Kutz?

4 "A. 1498 7th Street.

5 "Q. That's in Oakland?

6 "A. Oakland, California.

7 "Q. You know, you were given a subpoena to show up today.
8 You're here today. You understand we're here today to talk
9 about the police officer-involved shooting of Sahleem Tindle;
10 correct?

11 "A. Uh-huh.

12 "Q. Yes?

13 "A. Yes. Sorry.

14 "Q. That's all. I do it, too. Normal, conversational
15 tendency is to say 'uh-huh', but depositions are odd. Anyway,
16 I'm going to ask some questions about what you remember
17 relating to the shooting incident. Okay?

18 "A. Okay.

19 "Q. Prior to the shooting occurring -- the shooting I'm
20 referring to -- I know from reading your report there were
21 multiple gunshots. Two different people shot weapons. So when
22 I -- when I say the word 'shooting' or 'the incident', what I'm
23 referring to is the police officer shooting Mr. Tindle. Okay?

24 "A. Uh-huh. Yes.

25 "Q. So prior to the police officer shooting Mr. Tindle,

1 what do you remember about the events leading up to that point
2 in time? So within minutes leading to that incident.

3 "A. Leading up to when the police officer shot him?

4 "Q. Yes, sir.

5 "A. Just gathering the people who was in my shop and in
6 front of the shop and running them to the back of the shop to
7 hide because they were tussling on the ground.

8 "Q. 'They' being Mr. Tindle and Rayvell Newton?

9 "A. Yes.

10 "Q. You know Rayvell prior to this incident happening?
11 You knew who Rayvell was?

12 "A. Yes.

13 "Q. Did you know Sahleem Tindle prior to this incident?

14 "A. I learned his name after the incident. He's come
15 inside the shop a few times with his son to get his son a
16 haircut. I saw them. I was loading up toys Christmas night.
17 They were walking down the street, and I just had some toys. I
18 remember giving the little boy a couple of toys I had in the
19 back of the truck. That's the extent. I just know his face,
20 but I didn't know his name.

21 "Q. Okay. So on the date of the incident, you recognized
22 Rayvell; correct?

23 "A. Uh-huh, yes.

24 "Q. At that point in time, even if you learned it
25 afterwards, you can tell me that you saw Rayvell in a tussle

1 with Mr. Tindle. Did you recognize that Mr. Tindle -- excuse
2 me. Did you recognize that that was Mr. Tindle from your prior
3 noticing him, like did you recognize his face as the guy from
4 Christmas when you gave him the toys?

5 "A. Yeah. Because like you done skipped a whole piece of
6 my statement. It was clear I had seen -- that I had seen both
7 of them because there was some activity before the tussle even
8 took place to try and prevent the situation from even
9 escalating to a tussle.

10 "Q. You gave the statement to the police officers after
11 the incident?

12 "A. Yes.

13 "Q. You told them what you had observed; correct?

14 "A. Yes.

15 "Q. You tell me. Do you feel like your memory at the time
16 when you were talking to the officers is better than your
17 memory now of the incident?

18 "A. All I can say is -- all I can really remember is
19 trying to stop it and then I hid my clients. I hid the
20 barbers. And then we heard two separate sets of shots.
21 After -- I'm sorry. Correction. We heard three sets of shots.
22 The first time we heard a shot, there was just complete
23 silence. I looked out. They were still on the ground
24 tussling. We tried to move out to try to, like, get the gun
25 because it was on the ground, and the gun started moving. I

1 pushed the people back behind the -- there's like a little
2 wall. You could see it right there in the picture. I pushed
3 them back behind the wall again. That's when we heard, like,
4 three shots. If you see the bar, you see here in the bar where
5 the bullet hit. Then the bullet went through the top part of
6 the wall. I only know that because the police came and got the
7 bullet out a few days later. That's where we were all hiding,
8 so I never saw anyone shoot. I just heard them.

9 "Q. I'm going to show the witness page 11. There's two
10 sets of photographs. There's a pair of photographs towards the
11 bottom of the page. There's a pair of photographs towards the
12 top of the page. Would you agree with me?

13 "A. Yes.

14 "Q. These photographs depict the inside and outside parts
15 of the Upper Kutz Barber Shop?

16 "A. Yes.

17 "Q. And the top pair of photos, they are photos that look
18 like an exterior window that has broken holes through it?
19 That's the window to Upper Kutz; correct?

20 "A. Yes.

21 "Q. Are those holes there from -- caused by gunshots;
22 right?

23 "A. Yes.

24 "Q. From inside the barber shop, there was a -- you said a
25 bullet recovered?

1 "A. Yes.

2 "Q. It was recovered from the ceiling or the wall?

3 "A. The wall.

4 "Q. The wall?

5 "A. About right in this area here.

6 "Q. Prior to this tussle happening, you saw Rayvell

7 walking down the street?"

8 **THE COURT:** "Correct."

9 **MR. MORIARTY:** (Reading):

10 "Q. Correct?

11 "A. Yes.

12 "Q. Does Ray go by the name -- do you call him Ray or use
13 the full name Rayvell?

14 "A. I call him Ray.

15 "Q. Ray is Mr. Newton. I'm just telling that more for the
16 purpose of the record so we all know who you were talking
17 about.

18 "A. Okay.

19 "Q. So you saw Ray walking down the street. Do you
20 remember what street he was walking down?

21 "A. Chester towards 7th.

22 "Q. Chester towards 7th. And was he walking with -- was
23 anyone else walking with him?

24 "A. Mr. Tindle and his kids' mom.

25 "Q. Okay. And at that point in time when you saw

1 Mr. Tindle and Mr. Newton, were they saying anything to each
2 other?

3 "A. Yes.

4 "Q. What were they saying?

5 "A. I don't know. Arguing. There was an argument.

6 "Q. That would have been my follow-up question. Even if
7 you don't know specific words that they were using, they were
8 in an argument; right?

9 "A. Yes.

10 "Q. Do you know what they were arguing about?

11 "A. No. They were just -- they were just going back and
12 forth. You heard more -- you heard more of the girl than
13 Tindle.

14 "Q. And the girl being Mr. Tindle's child's mother or --

15 "A. Yes.

16 "Q. Might be his girlfriend or whoever she was?

17 "A. Yes.

18 "Q. And do you remember anything specific about what she
19 was saying?

20 "A. Not really, man. I just -- I just seen commotion with
21 two brothers. I knew one. I've seen one. And all I was going
22 to try to do is just stop it, especially on my corner, man. I
23 tried to keep it as peaceful as possible.

24 "Q. Stop things from escalating?

25 "A. That was about it.

1 "Q. Do you remember -- you can tell me again if you don't
2 remember. That's a perfectly fine answer. Do you remember
3 Tindle's girlfriend or the child's mother -- I'll just refer to
4 her as the girlfriend, the girl who was with Mr. Tindle. Do
5 you remember her saying words to the effect of 'go pop him',
6 talking to Ray -- talking about Ray?"

7 **MR. ALLEN:** I'm sorry, Your Honor. I've lost the
8 line.

9 **THE COURT:** Line 6, page 18.

10 **MR. MORIARTY:** 18, line 6.

11 **MR. ALLEN:** Thank you.

12 "A. I don't -- I don't really -- I don't -- I don't
13 recall.

14 "Q. Do you recall her encouraging Mr. Tindle to fight with
15 Ray?

16 "A. Yeah. I did hear her say that, but I didn't hear her
17 say 'shoot'.

18 "Q. Or 'pop'?"

19 "A. Pop, none of that.

20 "Q. Did you hear her say 'go knock him out' or words to
21 that effect?

22 "A. No. I think that's what she was probably saying
23 across the street. And when they crossed the street, I was --
24 I was trying to figure out, like, you know, what happened
25 because I didn't see him, and I was going to try to catch him

1 again when I saw them again just to talk to them and try to
2 stop it. I couldn't really make out what they were saying.
3 But you could hear her. She was extremely loud.

4 "Q. I'm trying to find out if you saw Mr. Tindle and his
5 girlfriend across the street before you saw what we were just
6 talking about, the argument with Ray.

7 "A. No. They walked right past me. They walked up on --
8 my back was to them as they were walking up, and I can hear
9 them arguing coming up. The closer they got to me, I turned
10 around. I could see all three. They had to literally walk
11 past me. Here's my shop. This is the street. This is BART.
12 You have to cross over. So they were coming up Chester towards
13 7th, and I was standing right on the corner. I have, like, a
14 little wood stool. Just sitting there. And about four or five
15 of us is outside talking, and they were coming up the street
16 arguing. You hear it all the time. As they got closer, I
17 turned around and looked, boom, it's one of my friends, and
18 it's just a person who had been in the shop. So I'm listening
19 because there's words, and then I tried to, like -- well, she
20 was really egging Tindle on, the girl was. I mean, she was
21 really -- the best word I can use is messy.

22 "Q. Messing?

23 "A. Messy.

24 "Q. Messy. 'She' being the girl Tindle was with?

25 "A. Yes.

1 "Q. After they walked past you, at this point in time,
2 what do you remember next? What happened next?

3 "A. Tindle turned around and started talking to Rayvell.
4 He was in the crosswalk. That's when he was like 'I should
5 clap your ass'.

6 "Q. Tindle said that to Ray?

7 "A. Yes.

8 "Q. What do you understand 'I should clap your ass' to
9 mean in the vernacular?

10 "A. I guess he was saying it can be either 'whoop your
11 ass' or it could be 'I shoot your ass'. So what I did in that
12 instance was now that I saw it was about to get ugly, I stepped
13 in between them. I stepped in between both of them. I said
14 'not right here, not right here'. And he walked off.

15 "Q. Tindle walked off?

16 "A. Yep. Didn't say anything to me. No foul, no fussing,
17 no yelling. I was like, 'Bro, not right here.' I stood
18 between both of them and he walked off.

19 "Q. What happened next?

20 "A. He walked off almost to BART. That's what I was going
21 to say anyway. And then she was -- she was in his ear. But
22 what probably looked like to Tindle was Rayvell telling us
23 something as if he was rallying troops. So Tindle was trying
24 to -- he gave her in his ear' --

25 **THE COURT:** He have --

1 **MR. ALLEN:** I'm sorry.

2 "A. He have her in his ear, and I'm watching him the whole
3 time, and he's trying to see what's being said on the corner.
4 At that point, I'm learning that the whole dispute was about a
5 pair of shoes.

6 "Q. Who did you learn that from?

7 "A. Rayvell. I'm like 'What happened?' He was like,
8 'Man, they were trying to take my shoes. They thought I was
9 walking back, but I came back on a bike, so I got back fast.'
10 That's what the whole dispute was all about.

11 "Q. During this time, you could see -- tell me if I'm
12 wrong -- you could see that Tindle was looking back towards
13 your direction where Rayvell is telling you guys what happened?

14 "A. Yes.

15 "Q. Okay. Tell me what happened next.

16 "A. He came back.

17 "Q. Tindle?

18 "A. Tindle came back. He ran across the street. Now,
19 everybody is like, 'Hey, don't come back.' Like, 'Stop. It
20 ain't worth it.'

21 "Q. Telling that to Tindle?

22 "A. Yes.

23 "Q. Okay. Then what happened?

24 "A. Then he came back, and Rayvell went into the
25 restaurant next door, and he pulled out his phone, man. I

1 didn't get what he was doing with that.

2 "Q. 'He' being Tindle?

3 "A. Tindle, yeah. He was recording, but he was like
4 really upset. So no one wanted to move, and he had his left
5 hand in his -- he had his left hand in his pocket. He chased
6 him into the restaurant, and then he came out, and then he
7 turned the camera on everybody. It was like, 'I need all you
8 niggas' faces.'

9 "Q. Did he tell you why he was doing that?

10 "A. No.

11 "Q. Did you have a belief based on --

12 "A. No.

13 "Q. Had you ever seen that happen before?

14 "A. No. I never seen anything like that.

15 "Q. After he tells you he needs all your faces, could you
16 see what was in his left pocket with his left hand?

17 "A. I was trying but was trying not to move, man.

18 "Q. You were?

19 "A. Yeah. Didn't want to make a sudden move because that
20 situation got real. It was real antsy real fast.

21 "Q. At that point in time, did you think Mr. Tindle was
22 armed with a gun just based on what you observed?

23 "A. I don't know.

24 "Q. Okay. That's fair. Like I told you, 'I don't know'
25 is a fine answer. What happened next?

1 "A. That's when Rayvell come running out of the restaurant
2 and tackled him.

3 "Q. Rayvell tackled Tindle?

4 "A. Yes.

5 "Q. Did Tindle go down to the ground?

6 "A. Yes.

7 "Q. Did Rayvell go down on the ground with him?

8 "A. Yes.

9 "Q. So now they're both on the ground. Are they tussling?

10 "A. Yes.

11 "Q. Does anyone exchange blows? Did anyone punch anyone
12 in the face?

13 "A. No. Rayvell was trying to get to the left hand. He
14 was intentionally trying to grab the hand.

15 "Q. Explain to me what you saw with Rayvell trying to go
16 for Tindle's left hand.

17 "A. That's it. Because when that jumped off, I had a -- I
18 had an elder lady and her two grandkids and then two other kids
19 that were there and then barbers and then like some older men
20 who were outside. When they started tussling, I'm looking at
21 the hand, Rayvell trying to get to the hand, and Tindle trying
22 to move the hand. I wasn't trying to see no more. My focus
23 was to get the people out from right here because we were all
24 literally like how close we were. That's just how close we all
25 were standing to the tussle. So I ran everybody back into the

1 barber shop, ran everybody behind a little wall that I have,
2 put everybody on the ground. I'm going to just lay it out for
3 you. We heard one shot; complete silence. We look out. They
4 were still tussling. You see the gun. So I'm like -- I
5 tell -- I tell one of the other customers 'let's take the gun
6 and call the police.' But the gun started moving.

7 "Q. Who had the gun?

8 "A. You couldn't really tell. It was on the ground.

9 "Q. Were Ray and Tindle fighting over the gun?

10 "A. No. Ray was just like, 'Come and take it. Come and
11 take it. I got him pinned down.' That was all of that.
12 That's the end. That's all I know. Once they started wiggling
13 on the ground again, I pushed everybody to the back.

14 "Q. Got it. So at that point in time when you described
15 the gun is on the ground, is the gun by itself, by itself
16 meaning no one is holding it? It's on the sidewalk?

17 "A. No, no, no, no. It's in the hand, but they're
18 tussling. It's not like oh, it's in the light-skinned hand or
19 it's in the dark-skinned hand. No. It's a gun being
20 recklessly moved in two hands between two people tussling. I
21 got innocent people that I need to be concerned about, so my
22 focus was get them out of the sight of the gun. Once I saw the
23 gun, I just wanted to get the people out of the way.

24 "Q. I understand.

25 "A. You have two people tussling. 'I'm letting you know

1 I'm about to touch you.' This is what it like. So I don't
2 know who have -- who have what on the ground, but I just know I
3 saw a gun, and I had innocent people who had nothing to do with
4 any of it.

5 "Q. I understand. Ray is telling you 'I've got him pinned
6 down, take it'?

7 "A. Uh-huh.

8 "Q. But at that point, you see that there's still an
9 ongoing tussle. Your concern is about the innocent folks with
10 you?

11 "A. Yes.

12 "Q. Before you saw Ray tackle Mr. Tindle, did you see
13 Mr. Tindle take the gun out of his left pocket?

14 "A. He never pulled the gun out.

15 "Q. Tindle?

16 "A. When I stepped between them and the crosswalk, I could
17 see the handle. That's what made me step in between them.

18 "Q. You could see the handle of the gun?

19 "A. Yes.

20 "Q. In Tindle's pocket?

21 "A. Yes.

22 "Q. Was it in his left pocket?

23 "A. I would say yes.

24 "Q. Okay. It's fair to say it's in one of his pockets you
25 saw the handle of the gun?

1 "A. Yes. That's when I said 'stop' and he left.

2 "Q. Got it. There's the first shot. Silence. You come
3 back out, and you see that the tussle is ongoing.

4 "A. Uh-huh.

5 "Q. There's the -- there's the gun. You got your folks
6 back inside the barber shop for protection; correct?

7 "A. Yes.

8 "Q. Okay. Then what happens after that?

9 "A. So I get everybody back into the back, and then I
10 heard about three shots, boom-boom-boom-boom. I mean,
11 boom-boom-boom. That's what I heard. Now, when I looked at
12 the ground, they have more little numbers down there, but I can
13 hear three shots, boom-boom-boom.

14 "Q. And after you heard those three shots, did you hear --
15 what did you hear next?

16 "A. Silence for a few seconds. Just literally maybe
17 like -- I don't know. Maybe three or four, five seconds. Then
18 you heard boom-boom, 'stay down.' That's when I came out.
19 That's when we all came out. Didn't see -- didn't see him
20 shoot.

21 "Q. Meaning you didn't see the officer shoot Mr. Tindle?

22 "A. No. Didn't see any of it.

23 "Q. So for the first gunshot, you didn't see that? You
24 just heard it?

25 "A. For the record, I saw not one shot.

1 "Q. Thank you.

2 "A. I didn't see one.

3 "Q. After the -- after you heard the -- was it boom-boom,
4 'stay down,' and then you came outside?

5 "A. Yeah. I just knew that.

6 "Q. Why don't you tell me again.

7 "A. Boom-boom-boom. First it was one shot. Then the
8 second time it was three shots I heard. That's when we back --
9 that's when we went back behind the wall the second time. The
10 last set of shots I heard was two, pop-pop, 'stay down,' and
11 then I came out. That's when I saw the police uniforms. I
12 didn't know if it was OPD or BART police or housing authority.
13 I didn't know who it was. I just seen -- I just knew the words
14 were some kind of law enforcement. Then I saw it was BART
15 police.

16 "Q. Before you heard the 'stay down,' did you hear any
17 other similarly authoritative voice say something like 'show me
18 your hands, show me your hands'?

19 "A. No. I didn't hear. I didn't hear anything. When I
20 watched the video to hear all that, I didn't hear none of that.
21 You have -- you have literally six, seven, maybe eight people
22 trying to get into this space, and I have, like, these
23 Craftsmen toolboxes in the back so all you can hear back there
24 where we were in is like boom-boom, boom-boom-boom, like people
25 was running in. You know, you hear feet. So a voice with the

1 window closed outside I know I wouldn't be able to hear -- I
2 ain't hear nothing, but you can hear the gunshots.

3 "Q. Got it.

4 "A. You can hear the gunshots.

5 "Q. After you come outside, the point in time I'm talking
6 about is after you hear 'stay down' and you come outside, after
7 that point in time, did you tell anyone what happened?

8 "A. What you mean?

9 "Q. Did any other witness come up to you and say 'Hey,
10 Mr. Evans, I saw X, Y, Z'? Did anyone tell you what went down?

11 "A. No one was out there. So if they say -- if somebody
12 say they saw something, they're lying. There wasn't nobody
13 outside but me and the people that I was -- that I was talking
14 to. I have had a lot of people, man -- and I hate to see that
15 two brothers ended up in that situation, but I've had a lot of
16 people come to me telling me they saw, and there was no one
17 outside. The commotion, although it was loud, it was on the
18 corner. It wasn't -- it wasn't like -- it was only loud
19 because I was in it. I was right there. You know what I'm
20 saying? And there was nobody. There was nobody standing
21 outside. And there was -- there was nothing to pay attention
22 to until you heard the gunshots. So like in the video when you
23 saw the girls running back inside saying 'they're shooting,'
24 that should have been -- that should have been anybody else's
25 response if they were standing outside because you heard

1 gunshots and you just took off running. There was nobody on
2 the corner.

3 "Q. What video is that?

4 "A. Well, the one from the officer's chest cam they
5 showed. They showed them asking the girl like 'What happened?'
6 She's like, 'They're shooting.' That's when you know on the
7 video, it show him running across the street.

8 "Q. Did you see that video on the news?

9 "A. Yes.

10 "Q. Which can include --

11 "A. YouTube.

12 "Q -- social media on YouTube?

13 "A. Yeah."

14 **THE COURT:** You may proceed.

15 **MR. NISENBAUM:** Thank you, Your Honor.

16 "Q. Good afternoon, sir.

17 "A. How you doin'?

18 "Q. Pretty good. You started testifying that you heard
19 one shot and then silence?

20 "A. Uh-huh. Yes.

21 "Q. And then some time later, you heard three shots in
22 rapid succession?

23 "A. Yes.

24 "Q. How long in between the one single shot -- what was
25 the time frame between that one single shot and the three

1 successive shots? Do you know how much time passed?

2 "A. I'm going to say probably the whole -- the whole
3 situation from the first shot to the officer probably was less
4 than two minutes. Maybe two minutes at the most. I'm really
5 guesstimating because I'm saying there was a space. I ain't
6 saying it was no lengthy space. There was just a pause. Shot.
7 Pause. Three shots, pause. Two shots, 'stay down.'

8 "Q. Okay. So let me ask, in between the time of the first
9 shot and the three successive shots, did you hear anyone
10 announce themselves as police?

11 "A. No. Not in the first three shots.

12 "Q. Did you hear in that time frame any commands such as
13 'Drop it, show me your hands'? Anything?

14 "A. No.

15 "Q. How much time elapsed between the three rapid shots
16 and the two final shots?

17 "A. Man, I really want to say like less than a minute.
18 Like, all that stuff seemed like it was all going fast. It
19 really seemed like it was going fast. Like the first shot and
20 then when I peeked out, we tried to go and get it, that was
21 probably like the longest. Because they were tussling and we
22 were trying to get to the door. Shit, I wish I would have made
23 it. We were trying to get to the door. That's the longest in
24 between time. When the gun started moving, I didn't look to
25 see who had it. My thing was let me not get shot and let me

1 make sure nobody else gets shot. Then we went to the back.

2 "Q. Gotcha."

3 **THE COURT:** Wait. "Then we went back to the back."

4 **MR. ALLEN:** Sorry. "Then we went back to the back."

5 **MR. NISENBAUM:** (Reading):

6 "Q. Gotcha.

7 "A. That was the longest stretch of time.

8 "Q. Where do you preach at?

9 "A. Word Assembly.

10 "Q. Where is that located?

11 "A. East Oakland. 1445 23rd Avenue."

12 **THE COURT:** Okay. Thank you. You can step down,

13 Mr. Allen.

14 Mr. Allen, as you're going past the mic, does the defense
15 rest?

16 **MR. MORIARTY:** Yes.

17 **MR. ALLEN:** The defense rests, Your Honor.

18 (Defense rests.)

19 **THE COURT:** Any rebuttal, Mr. Burris?

20 **MR. BURRIS:** No, Your Honor.

21 **THE COURT:** No rebuttal. Okay.

22 Ladies and Gentlemen, that concludes the evidence for
23 phase 2. We are going to go ahead and take just a short
24 10-minute break or so. The attorneys will get set up. You
25 will start hearing closing arguments on this phase. Okay?

1 We'll stand in recess for about 10 minutes.

2 (Proceedings were heard out of presence of the jury:)

3 **THE COURT:** I assume we have -- no. No motions at
4 this phase?

5 **MR. ALLEN:** No. It's the negligence phase,
6 Your Honor.

7 **THE COURT:** We will stand in recess for about 10
8 minutes.

9 (Recess taken at 1:57 p.m.)

10 (Proceedings resumed at 2:11 p.m.)

11 **THE COURT:** Let's call the jury in.

12 (Proceedings were heard in the presence of the jury:)

13 **THE COURT:** We're back on the record. The record will
14 reflect that the jury is with us.

15 **JURY INSTRUCTIONS**

16 **THE COURT:** Ladies and Gentlemen, I will now instruct
17 you on the law that applies specifically to phase 2. I will
18 not repeat all of the prior general instructions that I
19 provided to you for phase 1; however, those apply to this phase
20 as well, and you will remember that you still should have a
21 copy of those instructions that I used to instruct you last
22 week in your binder.

23 So in this phase, the plaintiffs bring a second claim.
24 This one for negligence under California law for the use of
25 unreasonable force by a law enforcement officer in the arrest

1 or other seizure of a person.

2 Under California law, a law enforcement officer may use
3 reasonable force to seize a person when the officer has
4 reasonable cause to believe that that person has committed or
5 is committing a crime.

6 However, the officer may only use that degree of force
7 necessary to accomplish this seizure.

8 Plaintiffs claim that defendant, Joseph Mateu, used
9 unreasonable force in seizing decedent, Sahleem Tindle.

10 To establish this claim, plaintiffs must prove all of the
11 following elements:

12 One, that defendant, Joseph Mateu, used force in seizing
13 decedent Sahleem Tindle.

14 Two, that the amount of force used by the defendant was
15 unreasonable.

16 Three, that plaintiffs were harmed.

17 And, four, that defendant, Joseph Mateu's use of
18 unreasonable force was a substantial factor in causing
19 plaintiff's harm.

20 In deciding whether Joseph Mateu used unreasonable force,
21 you must consider all of the circumstances of the seizure and
22 determine what force a reasonable police officer in Defendant
23 Joseph Mateu's position would have used under the same or
24 similar circumstances.

25 Among the factors to be considered are the following:

1 Whether Decedent Sahleem Tindle reasonably appeared to
2 pose an immediate threat to the safety of Defendant Joseph
3 Mateu or others; two, the seriousness of the actual crime at
4 issue. Next, whether Decedent Sahleem Tindle was actively
5 resisting seizure or attempting to avoid seizure by flight.
6 And Defendant Joseph Mateu's tactical conduct and decisions
7 before using deadly force on decedent Sahleem Tindle.

8 The defendant asserts that the decedent, Sahleem Tindle's,
9 own negligence contributed to his death. Under California law,
10 to succeed on this affirmative defense, the defendant, Joseph
11 Mateu, must prove both of the following elements:

12 One, that decedent, Sahleem Tindle, was negligent; and,
13 two, that decedent, Sahleem Tindle's, negligence was a
14 substantial factor in causing his death.

15 If Defendant Joseph Mateu proves the above, then
16 plaintiffs' damages are reduced by your determination of the
17 percentage of Decedent Sahleem Tindle's responsibility. I will
18 calculate the actual reduction.

19 Now, under California law, a person can be negligent by
20 acting or by failing to act. Decedent Sahleem Tindle is
21 negligent if he does something that a reasonably careful person
22 would not do in the same situation or fails to do something
23 that a reasonably careful person would do in the same
24 situation.

25 You must decide how a reasonably careful person would have

1 acted in Decedent Sahleem Tindle's situation.

2 Every person has a right to expect that every other person
3 will use reasonable care and will not violate the law unless he
4 or she knows or should know that the other person will not use
5 reasonable care or will violate the law.

6 Under California law, there is or can be a presumption of
7 negligence. You must decide whether Decedent Sahleem Tindle
8 violated California Penal Sections 25400(a)(2) or 25850(a) or
9 29800(a)(1) or 417(a)(2) as I define them in a moment and
10 written below; and, two, whether the violation or violations
11 was or were a substantial factor in bringing about the harm.

12 If you so find, then you must find that Decedent Sahleem
13 Tindle was negligent. If you find that Sahleem Tindle did not
14 violate California Penal Code Sections 25400(a)(2), 25850(a),
15 29800(a)(1), or 417(a)(2), or that the violation or violations
16 was or were not a substantial factor in bringing about the
17 harm, then you must still decide whether Decedent Sahleem
18 Tindle was negligent in light of all the other instructions.

19 Those Penal Code sections are as follows: California
20 Penal Code Section 25400(a)(2) states a person is guilty of
21 carrying a concealed firearm when the person does any of the
22 following: Carries a concealed, upon the person, any pistol,
23 revolver or other firearm capable of being concealed upon that
24 person.

25 California Penal Code Section 25800(a) states in pertinent

1 part a person is guilty of carrying a loaded firearm when the
2 person carries a loaded firearm on the person or in a vehicle
3 while in a public place or on any public street in any
4 incorporated city or in any public place or on any public
5 street in a prohibited area of unincorporated territory.

6 California Penal Code Section 29800(a)(1) states in
7 pertinent part, any person who has been convicted of or has an
8 outstanding warrant for a felony under the laws of the
9 United States, the State of California, or of any other state,
10 government, or country is guilty of a felony.

11 And California Penal Code Section 417(a)(2) states in
12 pertinent part, every person who, except in self-defense, in
13 the presence of any other person, draws or exhibits any
14 firearm, whether loaded or unloaded, in a rude, angry, or
15 threatening manner or who, in any manner, unlawfully uses a
16 firearm in any fight or quarrel is guilty of a misdemeanor.

17 Now, under California law, a substantial factor in causing
18 harm is a factor that a reasonable person would consider to
19 have contributed to the harm. It must be more than a remote or
20 trivial factor. It does not have to be the only cause of the
21 harm.

22 A person's conduct may combine with another factor to
23 cause harm. If you find that Defendant Joseph Mateu's conduct
24 was a substantial factor in causing Decedent Sahleem Tindle's
25 death, then he's responsible for the death. Defendant Joseph

1 Mateu cannot avoid responsibility just because some other
2 person, condition, or event was also a substantial factor in
3 causing the death of Decedent Sahleem Tindle.

4 Defendant Joseph Mateu claims that he was not negligent
5 because he acted with reasonable care in an emergency
6 situation. Defendant Joseph Mateu was not negligent if he
7 proves all of the following three elements:

8 One, that there was a sudden and unexpected emergency
9 situation in which someone was in actual or apparent danger of
10 immediate injury; two, that Joseph Mateu did not cause the
11 emergency; and, three, that Joseph Mateu acted as a reasonably
12 careful officer would have acted in similar circumstances, even
13 if it appears later that a different course of action would
14 have been safer.

15 If you decide that plaintiffs have proved their claim
16 under California law against Defendant Joseph Mateu for the
17 death of Decedent Sahleem Tindle, you must also decide how much
18 money will reasonably compensate plaintiff for his death. This
19 compensation is caused damages.

20 Plaintiffs do not have to prove the exact amount of the
21 damages. However, you must not speculate or guess in awarding
22 damages. The damages claimed by plaintiffs fall into two
23 categories called economic damages and non-economic damages.
24 You will be asked to state the two categories of damages
25 separately on the verdict form.

1 Plaintiffs claim the following economic damages: Funeral
2 and burial expenses. Plaintiffs also claim the following
3 non-economic damages: The loss of Decedent Sahleem Tindle's
4 love, companionship, comfort, care, assistance, protection,
5 affection, society, and moral support and the loss of Decedent
6 Sahleem Tindle's training and guidance.

7 According to the National Vital Statistics Report, Volume
8 68, No. 7, from June 24, 2019, a 28-year-old male is expected
9 to live approximately another 50 years. This is the average
10 life expectancy. Some people live longer and others die
11 sooner.

12 This published information is evidence of how long a
13 person is likely to live but is not conclusive. In deciding a
14 person's life expectancy, you should also consider, among other
15 factors, that person's health, habits, activities, lifestyle,
16 and occupation.

17 No fixed standard exists for deciding the amount of
18 non-economic damages. You must use your judgment to decide a
19 reasonable amount based on the evidence and your common sense.

20 In determining plaintiffs' loss, do not consider, one,
21 plaintiffs' grief, sorrow, or mental anguish; two, Decedent
22 Sahleem Tindle's pain and suffering; and, three, the poverty or
23 wealth of plaintiffs.

24 You must not include in your award any damages to punish
25 or make an example of Defendant Joseph Mateu. Such damages

1 would be punitive damages, and they cannot be part of your
2 verdict. You must award only the damages that fairly
3 compensate plaintiffs for their loss.

4 Okay. At this point, I will invite the plaintiffs,
5 Mr. Nisenbaum, to give a closing argument.

6 **MR. NISENBAUM:** Thank you, Your Honor.

7 **CLOSING ARGUMENT**

8 **MR. NISENBAUM:** And Happy Tuesday, Ladies and
9 Gentlemen of the jury. We are finally reaching the end,
10 although it feels like it went by pretty quickly.

11 There is a lot of evidence that came before you. I think
12 the most critical evidence you've likely already addressed. As
13 I indicated in my opening statement, there is an additional
14 component in the negligence claim for wrongful death, and that
15 really incorporates and gives greater emphasis to the
16 defendant's own negligent tactical conduct and his actions that
17 precede the shooting.

18 Now, you've heard a lot of this before, but I can't
19 emphasize strongly enough that under California law, they have
20 more bearing here, and that is not giving a warning, and of
21 course we know that that's wrong. If he couldn't see, not
22 taking steps to get a better view, but, again, we know that he
23 could see. So he could see there was still a struggle going on
24 over the gun, so there's that, too. If there is still a
25 struggle going on over the gun and a man is showing you one

1 hand when you're yelling at him to show his hands, what is the
2 man supposed to do? It's very obvious. He can't show the
3 other hand.

4 What the officer is not supposed to do, shoot him in the
5 back multiple times. That's negligent. It's negligent because
6 it violates the officer's training and standards. You heard it
7 from the officer himself, and, again, I don't want to rehash
8 everything, and it's, frankly, beyond belief. You are giving
9 him orders to show his hands. His hand comes out. You give
10 him no chance. You shoot him in the back. It doesn't make any
11 sense because the officer wasn't thinking. He wasn't
12 evaluating. He was simply reacting, and he killed a man
13 because of it.

14 Later you heard him say, "Well, he was getting up and it
15 was my error." Well, of course we know he wasn't getting up.
16 Yes, it was your error, but that's an error you can't take
17 back. That's a negligent error. You don't see things that
18 don't happen.

19 So making that error, not stepping to the right to get a
20 better view after losing sight of the gun, but, again, he could
21 see.

22 There is another point here, and we heard some testimony
23 in the previous phase from Mr. Papenfuhs about an unintentional
24 discharge, a discharge that can happen when people are
25 struggling over the gun. Now, it's clear that we heard the

1 sound of two gunshots in rapid succession. So who is the
2 witness here? Who is the witness who saw these gunshots? And
3 I'm going to tell you how important this is in this phase of
4 the case. There is something that changes. The burden of
5 proof with respect to the comparative fault with respect to
6 Mr. Tindle's own negligence, now the defense has it. Now the
7 defense must prove Mr. Tindle's negligence. So it's not enough
8 to simply say well, Mr. Tindle had a gun and shots went off;
9 therefore, that's on him. No. It's not enough to simply say
10 Mr. Tindle fired -- took to the streets, armed himself and took
11 to the streets of Oakland, and that's that. That's not enough.
12 That's not the negligence that is the substantial factor here.

13 If this officer reacts in a responsible way, according to
14 his training, Mr. Tindle completes the surrender -- and, by the
15 way, what are you supposed to do when an officer tells you to
16 "show your hands"? Show your hands to the best of your
17 ability. So how is it negligent to show your hand, the only
18 hand that you can? It's the opposite of negligent.

19 So the officer, it is on him. That misperception is huge,
20 again, and it looms large over this case as it did in the
21 preceding phase of the case. Mr. Tindle was obviously not
22 standing up, and we all know that. Mr. Tindle was trying to
23 surrender. That's very clear. He was trying to do what you're
24 supposed to do. We saw that in the video. He rolls over to
25 his back.

1 So did he start this fight? We've heard some evidence in
2 the form of deposition testimony, and you've heard from
3 Ms. Turner herself. It sounds like obviously there was an
4 issue between Mr. Newton and -- and the other man -- Mr. Tindle
5 and Mr. Newton.

6 Mr. Newton apparently has one side of it, but he didn't
7 come here to tell you that side. You didn't hear it from him.
8 You got to -- you heard it kind of secondhand through
9 Mr. Newton's friend, who referred to himself as Mr. Newton's
10 friend, the barber, saying that's what he told me. Well, of
11 course the barber didn't see that. He didn't see how this
12 thing started, but we have Mr. Tindle's own words, his own
13 dying declaration. And in case you missed it in the opening
14 statement, I would like to play that again at this point. And
15 this is Plaintiffs' Exhibit 10B, as in "boy."

16 It starts into the incident so we're not going to waste a
17 lot of time here. Hopefully. If you need a moment, I can --
18 okay. Thank you.

19 (Whereupon, the video was played.)

20 **MR. NISENBAUM:** That was his voice: "He started it,"
21 pointing him out. "He started it." His dying declaration, the
22 last words that he would ever speak. They tell us who started
23 it. We've heard -- like I said, in a sense Mr. Tindle has come
24 into court to say this. There he is. And there's his hands.

25 I can only imagine what it must feel like to shoot a man

1 in the back who was trying to surrender.

2 Now, with respect to whether or not this was an
3 unintentional discharge, where's the proof from the defense?
4 Where is their witness? Where is there person to say that
5 Mr. Tindle pulled this gun out? Where is there person to say
6 that Mr. Tindle pulled the trigger? We don't have that. What
7 we have is speculation and inference.

8 Now, I'm not telling you you can never decide a case based
9 on circumstantial evidence, but is there a tiebreaker here?
10 And, again, the burden is theirs.

11 So Mr. Tindle, according to Mr. Evans, had a gun in his
12 pocket, and if he did and if you find that that is credible,
13 then that's certainly a piece of negligence against Mr. Tindle,
14 and so, you know, we're not here telling you he has no fault.
15 It takes two to fight. It takes two to argue. Remember this,
16 though. Mr. Evans was out there calming the situation down,
17 and Mr. Newton was in the restaurant and came running out of
18 the restaurant and tackled Mr. Evans -- not Mr. Evans --
19 Mr. Tindle. Mr. Newton came out of the restaurant and tackled
20 Mr. Newton. And that's when they went to the ground and where
21 ultimately the struggle happened. That's what happened.

22 Now, if we go back to back, if you think about he started
23 it and you think about running out and tackling a person, well,
24 that might cause you to think the person who ran out of the
25 restaurant and tackled him started it.

1 You know, what about this issue around shoes? "They were
2 trying to take my shoes." Where is the evidence of that? We
3 don't have any evidence of that, period. So you don't have
4 that.

5 So what you have is a person who clearly should not have a
6 gun, and if you find that he had a gun, he has fault for that.
7 When that gun came out, how it came out, nobody here can say.
8 If it fell out, if after being tackled Mr. Newton -- Mr. Tindle
9 felt like he was being severely threatened and maybe he had a
10 gun for protection, and maybe he thought -- you know, maybe
11 somehow it came out. I don't know the answer to that and
12 neither do you.

13 What we know, at some point, the gun came out. It was
14 obviously after they were on the ground. If the gun is in a
15 pocket, how can it come out? It can be pulled out or it can
16 fall out. But, again, it's up to the defense to prove it.

17 So who pulled the trigger? Nobody here can tell you the
18 answer to that. What we do know, remember the oblique angle?
19 This is what is so important in the first phase. The oblique
20 angle that the officer claims he saw the gun angled upward
21 at -- angled upward, I think was the analysis. And you have
22 the two shots through the window glass. Now they want to tell
23 you it's one shot and the bullet shattered. Well, we heard two
24 shots. We have two shots through the window glass. Somehow we
25 only have four bullets and four shell casings when there should

1 be five. I don't know what that is about. I bet you if you
2 were to examine that wall closely, you would might find another
3 slug in that wall because you have two holes in the window.

4 **MR. MORIARTY:** Objection. Speculation.

5 **THE COURT:** Sustained.

6 **MR. MORIARTY:** My mic is off.

7 **THE COURT:** Excuse me? We'll turn it on.

8 Ladies and Gentlemen, there is no evidence of that. It's
9 speculation.

10 **MR. NISENBAUM:** Thank you.

11 In any event, there is evidence that they only recovered
12 four of the bullets and four of the shell casings.

13 So when you look at it, this is an officer who failed to
14 take any measures to find out what happened. This is an
15 officer who failed to recognize obvious surrender when it did
16 happen. This is an officer who later told investigators that
17 Mr. Tindle was getting up and that was a very thing that caused
18 the situation to change to a shooting situation, when the
19 evidence shows the opposite is true. He was surrendering.

20 So I think you have clear negligence. I told you in the
21 opening phase we're not saying that Mr. Tindle is blameless.
22 We accept some negligence, some culpability for him because he
23 should not have got himself involved. He shouldn't have had a
24 gun. I told you we will never make an excuse for that, and we
25 don't. But that negligence pales in comparison to the

1 officer's own negligence, running up on someone, shooting them
2 in the back three times, killing them. Again, what is the
3 harm? You let the surrender happen. Everyone lives. You kill
4 a man, he's dead. He's never coming back.

5 There is simply no comparison, in my view. You know, is
6 it 10 percent, maybe 15 percent negligence for Mr. Tindle? I
7 don't think it's any more than that, though.

8 What I would like to do now is take a brief moment to talk
9 to you about the damages, the remaining damages in this case.

10 Now, you have heard that Mr. Tindle cared deeply about his
11 family, and you know it not just from his family members who
12 said so, but Mr. Evans, how did he know Mr. Tindle? Because
13 Mr. Tindle took his son to get his haircut there. What's he
14 doing? Mr. Tindle, who walks his kid to school every morning,
15 where is he walking him to the few times that Mr. Evans had
16 seen him before this? To the barber shop. He's with his son
17 getting his -- getting him to get a haircut. Now -- and
18 multiple times, of course.

19 I would like to show you some of the photographs that
20 we've seen.

21 If I could have the ELMO, please.

22 This is 7A. It's easy to forget the human being behind
23 all this argument. But that's him. That's Mr. Tindle. There
24 we go.

25 Let's look at 7B. This is a black-and-white photo. There

1 we go. Family.

2 Look at 7C. We know that Mr. Tindle worked. We're not
3 here asking you for an award of wage loss. But he did work.
4 He did keep jobs when he could. He was a felon, as you've
5 heard. It's hard to get a job. But he worked when he could.
6 And there he is with his son again.

7 7D. I mean, there are so many.

8 7E at Lake Merritt.

9 Teaching his son to swim, life skills that you want to
10 pass on to your kids. One of the factors that you will hear on
11 damages -- that you did hear, loss of -- we call it loss of
12 care, comfort, and society. There is a lot more factors to it.
13 Training and guidance is one of them.

14 Now, you have heard that there were domestic issues
15 between Mr. Tindle and Ms. Turner. But guess what? Ms. Turner
16 is not here trying to recover for her relationship, her lost
17 relationship with Mr. Tindle. That's not a part of this
18 equation. Whether they had a bad relationship, that's not a
19 part of this equation. Whatever relationship they had, it did
20 not stop Mr. Tindle from being the father that he demanded of
21 himself.

22 This is 70. Again, there we know that he spent time away.
23 That he was in custody. You know, he was a felon. San
24 Quentin, but still a father who -- who brought Ms. Turner --
25 you've heard all about how bad their relationship must have

1 been. I guess that was the totality of it. Right? All the
2 bad stuff you heard, the police being called. There was a lot
3 more to their relationship and a lot more to Mr. Tindle than
4 what he has been painted as. This is a man who cares, cares
5 about his family. Cares about getting a job. Trying to
6 support his family. And cares about the training and guidance
7 that he received from his parents that he could then pass down
8 to his children. But now he can't.

9 So, like I said, I don't want to take up a whole lot of
10 time on this. I think there is really no question. First
11 Mr. Newton started it at the beginning. Of course there is no
12 excuse for Mr. Tindle doing what he did, reacting that way.
13 You walk away. That's the example that you should set. But at
14 the end of the day, the person who bears the most liability and
15 the most responsibility by far is the officer who failed in his
16 fundamental training. Didn't give -- who didn't give -- didn't
17 give warnings, who gave commands, and when a person tried to
18 comply with it, shot him in the back. Who relied on the look
19 on one person's face when he couldn't see the other person's
20 face.

21 So it seems to me that you don't get to say simply "it was
22 my error." You know, you don't get to say that. You can say
23 that, but it's not an excuse. It doesn't relieve you of your
24 obligation to be held accountable, to be held responsible to
25 the standards that you are trained for, to the standards that

1 you accepted. This officer accepted these standards when he
2 took the job. He told you he knew what the standards were. He
3 identified them all. You know -- and again, all the practical,
4 if reasonable, but what's not reasonable about giving a
5 warning? What's not reasonable about letting a surrender
6 happen? When you could tell there was still a struggle going
7 on over the right hand and right side, what is reasonable about
8 shooting Mr. Tindle in the back? I'll tell you what it is,
9 absolutely nothing.

10 So there are damages here, too. There's about \$10,800 in
11 economic damages for the funeral and burial expenses. You've
12 heard that testimony. Of course it is what it is. That's what
13 it was.

14 And then there are damages for Mr. Tindle's children.
15 There are damages for the kids who have lost their father, one
16 who will almost never know her father, will be reminded of him
17 but never have the real sense and opportunity to get to know
18 the type of man that he was.

19 But his son -- and everyone here has heard about how hard
20 it is to raise a son without a father. His son has lost
21 everything. His father cannot be there. He's not there for
22 his martial arts tournaments, not there for every event in
23 life. Not there to help him through the hard times when he
24 grows to be a teenager. Not there to tell him, "Son, I went
25 down a bad path. Don't take the path I took. Don't take that

1 path. Don't get yourself in San Quentin." You know, "Don't be
2 a felon. I'm doing all this work for you so you don't take
3 that path, and I can tell you what to avoid doing, and I can
4 show you the type of man my mom raised me to be and where I let
5 her down."

6 But it's up to you now to make a decision and determine --
7 again, I can't tell you what amount of money is a fair amount
8 of money to pay for a father's death. I can't do that,
9 especially for such young kids. If I knew, I would. I don't.
10 I know it's -- I know it's terrible.

11 Thank you.

12 **THE COURT:** Defense.

13 **MR. MORIARTY:** Thank you, Your Honor.

14 **CLOSING ARGUMENT**

15 **MR. MORIARTY:** Good afternoon, Ladies and Gentlemen.
16 Thank you very much for your time and for your patience. It's
17 clear to everyone that you're taking your job very seriously,
18 and we appreciate the time that you're away from your families
19 and from your jobs and how difficult it is to be a juror,
20 especially on a very serious case like this, so I'd like to
21 thank you very much.

22 As you're aware, Ladies and Gentlemen, the first phase of
23 the trial was the civil rights phase, and you reached your
24 verdict based on what was known to Officer Mateu at the time
25 of -- at the time that he shot Mr. Tindle. And I would just

1 guess, not having been in the deliberations, that your
2 deliberations focused on all the details surrounding the
3 shooting. You probably took a close look at the video. There
4 was undoubtedly discussions about the gun, who held it, and
5 whether, in fact, Officer Mateu's shooting was reasonable at
6 the time with the information he knew.

7 Now, at this point, you know so much more about the story,
8 about the events that led to the death of Mr. Tindle. You know
9 it's not as simple of a situation as was presented to you
10 before. You know it's not as simple as the deliberations the
11 first time when you considered what the testimony of
12 Officer Mateu was and compared that to the video and applied
13 the elements for the civil rights claim.

14 I want to be clear on what your job is now for this
15 verdict, for this time you deliberate. You will be able to use
16 all the evidence that's presented in the case, the evidence
17 presented in the first phase of the case, the evidence
18 presented in this second phase of the case.

19 I want to remind you that you can only use the evidence
20 that is presented in the courtroom. You can't speculate. You
21 can't wonder. You can't say, "I wonder if a certain person
22 came in, what he or she would say. I wonder if there's another
23 angle." You can't speculate. It's only what is in the
24 courtroom. Because you use that evidence, you determine what
25 the facts are, and you apply it to the law that the judge

1 instructed you on.

2 The most important part of this case is the most difficult
3 part of the case for you, and that's what I described for you
4 when we started the case in *voir dire*, and that's emotions.
5 Your job is undoubtedly difficult because someone has died.
6 That's the reason why we're here. And Mr. Nisenbaum and later
7 Mr. Burris are going to ask you to give a verdict that includes
8 damages and award damages for that death. And as you know,
9 Ladies and Gentlemen, when I talked to you during jury
10 selection, with death comes emotion. There is no question
11 about that. Someone is no longer with us, and no one wanted
12 that person to die.

13 But I just need to remind you, before I get into why we're
14 here and what happened, that your verdict has got to be based
15 on the facts that you determine based on the evidence that was
16 presented in the courtroom and the law the judge gives you, and
17 you've got to try your best to take the emotions out of your
18 decision. You've taken an oath to follow the law, and sympathy
19 just doesn't have any place in the deliberations and your
20 verdict.

21 At this point, I'd like to walk you through the evidence
22 that you're going to use to determine who is legally
23 responsible for Sahleem Tindle's death. And, Ladies and
24 Gentlemen, this story does not begin when Officer Mateu hears
25 the gunshots. It does not begin when he runs across the

1 street. It does not begin when he sees the gun and has to make
2 a decision. The story began years before January 3, 2018.

3 Mr. Nisenbaum just said that Mr. Tindle was a man who
4 cared. Again, you have to distinguish the words of an attorney
5 from what evidence has come in. The words of attorney -- my
6 words right now are not evidence. This is my interpretation of
7 what the evidence is and the law. But you have to question
8 words like this, that Mr. Tindle was a man who cared, and we
9 have to peel back the story to try to figure out how we got
10 here.

11 And what we learned, Ladies and Gentlemen, from the
12 evidence, from the evidence in this case, is that back in 2007,
13 Mr. Tindle choked out a 16 year old on a Muni train. He took
14 the case to trial. He was convicted of a felony. And he was
15 sent to San Quentin.

16 Why that's important to this story, Ladies and Gentlemen,
17 is this: When Mr. Tindle was released from San Quentin, he
18 knew now he was a felon. He knew the laws of the country, the
19 United States laws, and the laws of California made it illegal
20 for him to have a firearm. He was now a felon, and the laws of
21 the land say that felons are not to be trusted with firearms.
22 That's what they're there for.

23 Yet the evidence -- what did we learn next about
24 Mr. Tindle? In 2009, after he got out of San Quentin, he
25 carried a .357 Magnum in San Francisco. He was arrested again.

1 This time he pleaded guilty to a federal gun charge.

2 We learned, Ladies and Gentlemen, that Mr. Tindle
3 continued to disregard the laws of this land. In 2011, he was
4 arrested with known gang members, and his parole was revoked.
5 In 2012, Mr. Tindle fought with the police during a routine
6 traffic stop, and his federal probation was revoked.

7 Now, Mr. Nisenbaum says that there were domestic issues,
8 and I agree. There were domestic issues, and I think we can
9 agree that the -- the relationship of Ms. Turner and
10 Mr. Tinge -- Tindle, excuse me, was a complicated relationship.

11 What the evidence is -- and these are not words of
12 attorneys -- is that in 2015 when Ms. Turner was three months
13 pregnant with her daughter Sionye, there was a fight. There
14 was a punch. There was the police. And Mr. Tindle was
15 arrested.

16 In 2016 when young Sahleem was six years old, again, what
17 started the story for Ms. Turner was this was just an argument
18 over a jacket or a jacket was torn. What we learn is that
19 Mr. Tindle shoved her against a wall. A good Samaritan
20 intervened. Mr. Tindle ran off with young Sahleem and was
21 arrested by the police.

22 We learned from Ms. Turner when she talked to the police
23 department, the Oakland Police Department, after this event,
24 that in 2017, Mr. Tindle was back possessing guns. Ms. Turner
25 told the Oakland Police Department that, "No, I didn't see him

1 with a gun today, but I know back in 2017 he stole a gun from
2 someone in San Francisco."

3 So you have to question an interpretation of the evidence
4 that Mr. Tindle cared, because the backdrop to this incident,
5 this day of January 3, 2018, seems to indicate the opposite,
6 that he didn't care. That he didn't care about the citizens of
7 the State of California. Because the evidence showed that
8 Mr. Tindle was frequently arrested for crimes involving
9 firearms and violence. Can't get around that.

10 That he was -- he was dangerous and didn't have any
11 consideration for the law. And this, Ladies and Gentlemen --
12 this is not a theory. This is not guesswork. This is not
13 speculation. This is what the evidence has proven.

14 And the evidence has proven that Ms. Turner's -- they had
15 a complicated relationship. You can't get past that. But her
16 testimony on a prior occasion when she said that he's calm and
17 peaceful and that he's not quick-tempered, the evidence
18 suggests the exact opposite, Ladies and Gentlemen, and the
19 evidence suggests that I'm not so sure he is a man who
20 Mr. Nisenbaum described as a person who cared.

21 And you noticed, Ladies and Gentlemen, during Ms. Turner's
22 testimony that she tried to excuse every single incident that
23 got brought up when I had to question. It's my job. I had to
24 question her when she said he's calm, he's peaceful, he's not
25 quick-tempered because the evidence suggested the exact

1 opposite, and those questions had to be asked of her to
2 determine if she was really telling the truth when she
3 expressed those opinions.

4 When you -- at this point, you're determining and you're
5 assessing who is to blame for Mr. Tindle's death, and I would
6 just suggest this: That you really need to question the words
7 of his mother and the words of Ms. Turner when they describe
8 Mr. Tindle. I don't think you can take their words at face
9 value.

10 Without question, they undoubtedly loved him. That's not
11 in dispute. But I -- I think based on their words and based on
12 the evidence in this case, the evidence suggests they were
13 trying to portray him to you -- to you -- as someone who he was
14 not or someone who they believed he was because the evidence
15 doesn't show what they said about him was true.

16 And it's important, Ladies and Gentlemen, in this phase of
17 the case that you realize, based on the evidence, the man that
18 Mr. Tindle was.

19 He was not a lightning rod. Lightning did not find him.
20 Trouble did not find him. Mr. Tindle was the type of person,
21 based on the evidence, who acted in a certain way that brought
22 pain to himself and pain to others. He wasn't a reactor, as
23 Mr. Nisenbaum just described him as. He wasn't a person -- and
24 we will get to it -- who was reacting to Mr. Newton. All the
25 evidence suggests that he was an actor, and people reacted to

1 him.

2 The evidence in this case has also demonstrated for the
3 same 13 years, my client, Joseph Mateu, was a BART police
4 officer. The dirt that was developed on him was that he was
5 poor at writing reports. He had to go to the academy twice,
6 and for that he went to a junior college class and got better
7 at writing.

8 The evidence in the case tells you that he completed and
9 passed all of his training. The evidence in this case tells
10 you that he was a patrol officer. He wasn't a fare evasion
11 officer. He was a BART patrol officer, which you heard is the
12 same as any police officer in any major city. He deals with
13 serious crimes such as robberies, carjackings, guns and
14 everything.

15 And the evidence has shown you, Ladies and Gentlemen, that
16 he was an officer who ran to danger and put his life at risk in
17 order to save the lives of others. It's important that we get
18 away from dissecting that video and looking at it frame by
19 frame and learn why we are here. How did Mr. Tindle's life
20 converge with Officer Mateu's life?

21 And with that background, let's look into the day itself,
22 the day of January 3, 2018.

23 What we've heard is that Mr. Tindle, Ms. Turner, and their
24 two children, Sahleem and Sionye, woke up in Oakland.

25 Ms. Turner lived in an apartment on Willow Street, which is a

1 very short walk to the West Oakland BART station.

2 Again, the shooting led us here, but the decisions made
3 prior to that shooting started the ball rolling, the chain of
4 events. And what do we know based on the evidence had to take
5 place before January 3, 2018? Mr. Tindle had to make a
6 decision to break the law, knowing that he was a felon, and
7 it's not the kind of situation where you're a felon and you
8 think you might not be able to possess a gun. You know you're
9 a felon and you've been convicted of possessing a firearm. You
10 know full well when you change your plea and plead guilty, *I*
11 *can't do this.*

12 But the evidence suggests, it proves, it has to be that
13 before January 3, 2018, Mr. Tindle made the decision to
14 purchase a gun, to come into possession of a gun. He made the
15 decision to make sure he had ammunition that worked in that
16 gun. And at the time that decision was made, he knew it was
17 illegal to do that.

18 There is not much evidence as to what happened in the
19 morning of January 3, 2018. I think Ms. Turner might have said
20 that the family was together and had breakfast, so I apologize
21 for that. But what we know for certain based on what happened
22 later in the day is that Mr. Tindle armed himself with that .40
23 caliber SIG Sauer semiautomatic pistol. He either loaded the
24 gun or he made sure the gun was loaded. And he also made sure
25 that gun was in working order, also known as it could be fired.

1 In the late afternoon, Mr. Tindle and his family set out
2 to walk from their house to the West Oakland BART station.
3 Ms. Turner testified that that's about a three- to four-minute
4 walk from their house to the BART station. And the group was
5 Mr. Tindle, Ms. Turner, Ms. Turner's sister, Ardanna, Sahleem,
6 and Sionye in the stroller.

7 Mr. Tindle had his loaded SIG Sauer pistol in his pocket.
8 And when you look at the negligence per se instruction, you'll
9 learn that not only was he a felon in possession, you can't do
10 that, but you also can't walk in a city with a concealed
11 weapon, so as soon as he put that in his pocket, he's also
12 committing another crime, irrespective of his felon status.

13 As the group of five walked towards the West Oakland BART
14 station, what the evidence has shown is that they came across a
15 bag on the ground that held some Air Jordan girls or female
16 basketball shoes. We learned later that those Air Jordans
17 belonged to Mr. Newton, who was not around the bag at the time.

18 And you do have evidence -- and I disagree with what
19 Mr. Nisenbaum said about how this came about, because if --
20 when you listen to Mr. Evans's testimony, he said after this
21 beef, when he talked to Mr. Newton, "what's this about," he
22 said, "they took my shoes." So there is evidence --
23 Ms. Turner, of course, said, "we just looked and kept walking
24 and then he attacked us and instigated and was the aggressor,"
25 but there is evidence at the very least that this argument was

1 about the shoes on the ground, whether they are taken, whether
2 they are looked at, but that's what started this event. And
3 what we learned is that Mr. Newton confronted Mr. Tindle about
4 those shoes and whatever he did with them.

5 The words of attorneys can say that Mr. Newton was the
6 aggressor. I like to stick to the evidence. There is no
7 question in the evidence that Mr. Newton was not harmed --
8 excuse me -- that he wasn't armed. Ms. Turner even agreed with
9 that. Mr. Newton didn't have a knife. He didn't have a gun.
10 This was a verbal argument between Mr. Newton and Mr. Turner.

11 What we learned is that this is a verbal argument between
12 two people who don't even know each other. Ms. Turner told us
13 there is no beef. They don't hate each other. This is just an
14 argument, I hate to say silly, but stupid argument over a pair
15 of shoes.

16 And what we learned from the evidence is that the argument
17 made its way to the location in front of Upper Kutz.
18 Ms. Turner testified that there is a lot of cursing and
19 Mr. Evans said something to that effect. So it sounds like
20 this is a loud movement down the street in front of his barber
21 shop on 7th and Chester.

22 That loud movement, you just heard the testimony and I
23 dispute what -- what Mr. Nisenbaum said. That's testimony
24 under oath, and you saw at the beginning of the deposition,
25 this is the same as -- same as testimony in front of a judge

1 and jury, and you're supposed to accept that testimony. That's
2 what you heard come in. And the testimony of Mr. Evans --
3 describes this loud argument coming in front of his barber shop
4 that led to his involvement. And he said, I think three times
5 during his testimony at deposition, what his goal was: "I
6 tried to stop it."

7 At one point, he said, "I'm trying to keep my corner
8 safe." He doesn't want that kind of action in front of his
9 business.

10 I have described the barber, the pastor, I guess also the
11 clothes seller, Mr. Evans, as someone who is kind of a good
12 Samaritan in this situation. He is trying to end a dispute.
13 He knew both Tindle and Newton. His goal, again, was to stop
14 it, to end the argument. He understood what was going on,
15 Ladies and Gentlemen. He got it. He knew, based on what he
16 saw and what he heard, that this was all bad.

17 His goal was to make sure those loud words coming in front
18 did not turn physical. And he tried to get involved to end
19 this. But it didn't end because of Mr. Turner -- excuse me --
20 Ms. Turner and Mr. Tindle.

21 Evans knew this was all bad. He got involved, and he knew
22 it was really all bad when he got involved during the argument
23 and he saw Tindle with a loaded pistol in his pocket.

24 And what did he say in his testimony? "I could see the
25 handle. That's what made me step between." He was telling you

1 this is going to go all bad. It's almost like *I've seen this*
2 *before. This has got to stop. I'm just trying to keep the*
3 *corner safe. I'm trying to stop this.*

4 In essence, what Evans told you is that this incident did
5 not need to happen. He told you the opposite of what
6 Ms. Turner said. He said the instigators were Ms. Turner and
7 Mr. Tindle. He said that Turner was egging Tindle on.

8 And Tindle, Ladies and Gentlemen, he predicted to you
9 through his words that he was going to shoot Newton. He said
10 he should clap his ass. Mr. Nisenbaum disputed that when he
11 asked Cardoza questions. That could be hit him. You never
12 know. It needs to be the context. And I asked and I followed
13 up with Mr. Cardoza or Sergeant Cardoza, "Would it change your
14 opinion when he made that statement, 'I should clap your ass',
15 his hand was in his pocket on a gun?" He said, "Yeah, that
16 would change it." That would make it stronger to determine
17 these aren't simply words. That's a threat that can be carried
18 out. That's not someone threatening to hit someone. When you
19 have your hand on a gun and you said you should clap his ass,
20 that's a threat made by a man, who, as we've seen, the
21 background, the perspective, is someone who is not a stranger
22 to guns and is not a stranger to violence, and he predicted
23 what he was going to do.

24 Nonetheless, Evans was able to break up the first
25 incident, and there was no physical touching or grabbing or

1 fighting or wrestling between Newton and Turner.

2 At that point, Evans told you they walked away. They
3 walked away. Tindle and Turner walked away. And they walked
4 away towards BART.

5 They're walking -- if they kept walking, they just walked
6 right by Officer Mateu who is talking to the lady from Tucson
7 about fare evasion, but they didn't. Tindle didn't cool off.
8 He didn't get on the train. He didn't go to San Francisco;
9 instead, he went back with that gun in his pocket.

10 And this idea that's been floated of self-defense is --
11 some of the ideas and theories boggle -- boggle me and confuse
12 me. Let's just be clear, Ladies and Gentlemen, you don't need
13 to know the ins and outs of self-defense. You walk up to
14 someone and threaten to shoot them with a gun and that person
15 runs at you to try to take the gun off you, self-defense does
16 not come into that picture. The person who's being threatened
17 is trying to defend himself. In your wildest dreams, if you
18 think that I can walk up to someone, threaten them with a gun
19 in my pocket, they run at me unarmed, and I shoot them and I'm
20 defending myself, that is not self-defense.

21 When Tindle comes back, Newton *[sic]* tells you what this
22 case is all about. He tells Tindle, "It ain't worth it."
23 Again, he's telling him, "Come on, man. I know you got a gun
24 in your pocket." This is over a pair of shoes. "Don't come
25 back."

1 From that point, we learn that Mr. Tindle made a move that
2 goes to his character, and I tell you, Ladies and Gentlemen,
3 that the evidence here does not suggest that trouble finds him.
4 And this idea of Newton being an aggressor, focus on this. You
5 have a man coming at you who has just threatened to shoot you
6 with a gun in his hand. Newton is unarmed. There is clearly
7 bad blood. What choices does he have? The unarmed man who has
8 someone coming at him with a gun, run for the hills and try to
9 outrun that bullet, or run at that person and try to take the
10 gun away? And that's what Mr. Newton did. And that's the move
11 of someone who is cornered, an unarmed man who is staring down
12 someone who doesn't like him, who has a gun, who has threatened
13 to shoot him. Evans knew it was all bad. That's why he ran
14 for cover and pushed his clients to the back of the barber
15 shop.

16 What we know from there, Ladies and Gentlemen, there is a
17 shooting. And I'm going to talk about it later in this
18 discussion about how we know Tindle is the shooter, but there
19 is a shooting by Tindle. Six seconds later, there is another
20 shooting. What we know is one bullet goes into the leg and out
21 of the leg of Mr. Newton and the other bullet hits the iron in
22 front of the window, splits, the jacketing goes through the
23 window, the lead core goes into the back of the barber shop and
24 gets stuck in the wall.

25 That's the backdrop. That's why this case is so, so much

1 more, Ladies and Gentlemen. That's the backdrop. That's what
2 happened. That's what we know about Mr. Tindle. That's what
3 we know about what he did that day before my client ever
4 becomes involved in this incident.

5 This case began way, way, way before those two shots were
6 fired.

7 I hope you understand, Ladies and Gentlemen, that I'm
8 doing my job. It doesn't bring me any pleasure to talk ill of
9 someone who is not with us. But it has to be done. Why are we
10 here? Who started this?

11 Ladies and Gentlemen, Mr. Tindle brought this upon
12 himself. He is the reason why Mateu acted and he had to act.
13 He's the reason why Mateu is running. He heard, he ran, people
14 were screaming. Mr. Tindle is the reason why Mateu ran, saw a
15 gun, and had to make that split-second decision.

16 The evidence has shown that Mr. Tindle has had many
17 choices that day to make sure that Mr.-- excuse me --
18 Officer Mateu did not have to make that split-second decision
19 and do his job correctly.

20 Of course -- and everyone is doing their job here,
21 plaintiffs' counsel, Mr. Nisenbaum and Mr. Burris -- wants to
22 turn your attention away from Mr. Tindle and dump on
23 Officer Mateu. And we've heard those arguments many times, and
24 I anticipate we will hear more of them. A man was shot in the
25 back as he tried to surrender. But now that you know the whole

1 story, I'll just ask this question: Is that fair? Is it fair?

2 We fully understand that Officer Mateu is a police
3 officer. Being a police officer is dangerous work, and this is
4 what he signed up for. That's not in dispute. But what --
5 your decision at this part of the case when you deliberate,
6 likely tomorrow morning, is to decide who's responsible for
7 Mr. Tindle's death. And counsel for plaintiff -- I anticipate
8 there will be more of the common theme. He was shot in the
9 back, he was shot in the back, he was shot in the back, and
10 concentrating on each slide that led up to that shooting. And
11 I'm not sure for this part of the case that's what the focus
12 needs to be.

13 And I disagree with what Mr. Nisenbaum says, that
14 Mr. Tindle deserves some of the fault. This case is completely
15 different than the first phase of the case, Ladies and
16 Gentlemen, because now you know the role that Mr. Tindle played
17 in causing his own death. And what I'd ask you to do, before
18 we get into the law, is really listen to the evidence that's
19 been proven, apply it to the law, and I think you'll determine
20 that Officer Mateu did his job correctly on January 3, 2018.
21 But you will also determine that Mr. Tindle caused his own
22 death.

23 The claim for this first part of the -- excuse me. The
24 claim for this phase of the case is negligence, and negligence,
25 Ladies and Gentlemen, simply put means you're not doing your

1 job properly. You're not acting properly. It's a different
2 standard than the constitutional civil rights standard that you
3 had in the first part of the case.

4 So at this point, you're going to consider different but
5 similar factors to determine whether Officer Mateu did his job
6 correctly. And now, as I've stated, you can consider what
7 Mr. Tindle did and the role he played in causing his own death.

8 And I've made a roadmap that is a little bit easier --
9 that simplifies your job, Ladies and Gentlemen. The roadmap
10 goes like this:

11 You are first to determine if Officer Mateu did his job
12 reasonably. And the plaintiffs are the ones that need to
13 prove -- it's their burden of proof that he did not act
14 reasonably and caused the death of Mr. Tindle. And if you
15 believe us, that they cannot prove that, and that Officer Mateu
16 acted reasonably, what you would do is check "no" and sign the
17 verdict form and your job is done.

18 If you believe that they have proven to you that
19 Officer Mateu acted unreasonably and his unreasonable actions
20 caused the death of Mr. Tindle, then it's a pivot, and you
21 focus your attention on Mr. Tindle and how his conduct caused
22 the death, if you believe that we've proven that Mr. Nisenbaum
23 is correct. So for the first part they prove -- it's their
24 burden of proof to prove that Mateu was the cause. For the
25 second part, the comparative fault, it's our burden.

1 Finally, if you get to the point, Ladies and Gentlemen,
2 where you think Mateu acted unreasonably, where you think
3 Tindle also was at fault, then finally what you would do is
4 assess who is more to blame, and those are the percentages that
5 the judge referred to you, and I will give you a preview. If
6 you believe that Mateu and Tindle were at fault, I'm going to
7 suggest that Tindle was a very high percentage of that fault
8 for his own death.

9 Let's talk about Mateu in the first portion of the case.
10 The plaintiff has the burden to prove that Mateu's is negligent
11 on January 3, 2018. And again, these are the four elements
12 that they have to prove, but I'm going to simplify your job for
13 you.

14 The ones that are not in italics are not at issue. So, in
15 other words, obviously Mateu used force in seizing Mr. Tindle.
16 And the plaintiffs -- and those are the children -- were
17 harmed, and that his unreasonable use of force was a
18 substantial factor in causing the plaintiffs' harm. And so
19 what the issue in this stage of the case is whether or not they
20 have proven that Officer Mateu used unreasonable force. And
21 it's their burden to prove that.

22 There are four factors for you to determine whether
23 unreasonable force was used by Mateu and whether they have
24 proven that.

25 The first one is did Mr. Tindle pose an immediate threat,

1 and I would suggest, based on the evidence, Ladies and
2 Gentlemen, that, you know, a man with a gun is a threat. We
3 know that that gun worked based on the prior two shots fired.
4 Even though Mateu didn't know at the time, Tindle had
5 previously fired that gun, and we know, based on the evidence
6 that we'll discuss later, that that was Tindle's gun and that
7 Tindle had the gun in his hand at the time he was shot after
8 refusing to obey lawful commands of Mateu when he was shot.

9 I don't think, Ladies and Gentlemen, there can be any
10 more -- can be any more of an immediate threat. Not only was
11 he a threat to Newton, to Mateu, but also other members of the
12 community. You know, it's a busy day. It's 4:00 in the
13 afternoon right across from the West Oakland BART station.

14 I'd like to transition for a quick second, and this is a
15 little bit confusing to me. You've -- I have already talked
16 about self-defense, which I just don't -- I just utterly am at
17 a loss how that could apply to this case, but I would also like
18 to talk to you about this idea, this theory, this statement by
19 a lawyer that is not evidence that has been floated that this
20 was an accidental discharge. That's not supported by the
21 evidence, Ladies and Gentlemen. Where is the evidence, besides
22 words of attorneys -- where is the evidence that the gun was
23 accidentally fired twice? There is none.

24 Remember -- we'll get to Ms. Turner in a little bit. I
25 asked Ms. Turner, "you're right there" -- and we'll talk about

1 that. She is standing right there when the gun is fired. "Did
2 you see it land on the ground?" "No." "Did you hear anyone go
3 'oh, shoot, that gun shouldn't have gone off'?" What you have
4 heard and the evidence is here that guns don't shoot
5 themselves. You need to have a finger on the trigger, and it's
6 pulled. So when you hear that accidental discharge theory,
7 that's a theory. That is asking you to go outside the four
8 corners of the courtroom and speculate. There is no evidence
9 that anyone accidentally fired this gun.

10 And your duty is to find the facts based on the evidence,
11 not based on speculation outside the courtroom. You solely
12 determine the evidence based on what's in front of you.

13 Where it gets confusing with Mr. Nisenbaum's arguments is
14 circumstantial evidence and direct evidence. You have a jury
15 instruction about it raining outside and someone walking in
16 without seeing that it's raining and someone is wet. I will
17 make it more simple based on this case, Ladies and Gentlemen.
18 Whose gun is it? Simple, right? What's direct evidence?
19 Mr. Evans. Mr. Tindle had a gun in his pocket. That's a
20 direct observation of someone with a handle of the gun in their
21 pocket. Okay?

22 What's circumstantial evidence? To prove the same fact,
23 what evidence can you rely on to prove the same fact?

24 Ms. Wong. Got the gun, swabbed it, 1 in 172 decillion on the
25 grip where you hold the gun. That's Mr. Tindle. And so this

1 idea that it's his gun, that he didn't shoot the gun, and what
2 Mr. Nisenbaum floats as far as this idea of speculation and
3 conjecture and who knows if the gun fell out of his pockets,
4 who know where the two shots came from, what I would like you
5 to do is focus on the circumstantial evidence and the direct
6 evidence, and the key to circumstantial and direct evidence is
7 that you link everything together to see what the evidence
8 proves as far as the facts of the case and what your
9 determination is.

10 I think what you will see in the arguments so far and the
11 arguments to come, that there is not a real focus from the
12 other side on the evidence. It's more just the hammer and the
13 nail, the same theme that a man got shot in the back. But what
14 I would like to do is have you rely or use the evidence to see
15 what's been proven. And the key to the circumstantial evidence
16 and the direct evidence and all the evidence is that the pieces
17 of evidence do not stand in isolation. You put them together
18 and see what the story tells you.

19 And the nice thing, Ladies and Gentlemen, which you can --
20 you know we can argue and say hey, who knows about Evans?
21 Maybe the guy is full of it, right? Who knows if he was
22 telling the truth. Well, that can be an argument when he saw
23 the gun in his pocket. Who knows what he was thinking because
24 he's human.

25 The beauty of circumstantial evidence, Ms. Wong, she can

1 come here in 30 years and testify to the same thing. The
2 circumstantial evidence, the scientific evidence, it doesn't
3 take an oath. It doesn't change. It doesn't say something on
4 one occasion and say something else on the next. It's not
5 affected by memory, relationships. I want you to focus on the
6 evidence and what's been proven.

7 Evans sees the argument. He hears Turner say, "I'll clap
8 your ass" -- excuse me. He hears Tindle say, "I'll clap your
9 ass." He sees Tindle with a gun. We know based on other
10 evidence, Ladies and Gentlemen, that Mr. Tindle is no stranger
11 to a gun.

12 The evidence is that Newton was unarmed. Newton, with
13 nowhere to go, rushes at Tindle. Two gunshots are heard.
14 Newton is shot in the leg. And he told -- remember when
15 Officer Mateu testified? He told the officer "he shot me."
16 This is evidence.

17 Another bullet goes through the window of the barber shop.
18 The video shows when Officer Mateu approaches, Tindle has got
19 the gun in his left hand. The video at the end shows the gun
20 coming out of his right hand. The evidence shows that Mateu,
21 through his testimony and through the evidence -- through the
22 video, shot three times. The evidence at the scene shows that
23 the SIG Sauer was shot twice. Granted, some evidence was lost.
24 What's the answer for the ShotSpotter that says there is a
25 shot? There is a shot six seconds later. And then there is

1 three shots that correspond with Mateu. And Officer Cardoza,
2 Sergeant Cardoza, said that exact timing corresponded with the
3 shots that are heard in the body-worn camera.

4 The weapon is tested for DNA, and we've talked about that.
5 Mr. Tindle's DNA is on the gun. That positively corroborates
6 that Evans's testimony that the gun was Tindle's is correct.
7 That positively corroborates Mateu's testimony in the video
8 that that gun was in Tindle's left hand. And then what do we
9 hear? We lawyers think we're great at questions. We're not.
10 We get bogged down. We withdraw our questions.

11 A juror asked Sergeant Cardoza today, "What evidence do
12 you have about who was the shooter?" And what did Cardoza tell
13 you? He did a whole investigation. I think he said, like a
14 police line, there is a totality of the circumstances. "I
15 talked to all of the witnesses. No one said Newton was the
16 shooter. Everyone said Tindle was the shooter." That's the
17 evidence. All of that, Ladies and Gentlemen, is the evidence
18 before you. That's not a theory. That's not an argument.

19 You need to piece everything together, and I just -- I
20 don't -- I hear my voice rising. I don't want to yell at you.
21 But when you piece everything together and when you work
22 through the evidence, it only points to one logical conclusion,
23 Ladies and Gentlemen, and that's Tindle was an immediate threat
24 based on what we know about him, what he did before, and he was
25 a threat to Mateu, to Newton, and to the rest of West Oakland.

1 With respect to the seriousness of the crimes, I don't
2 think this is in dispute. It might be. You know, we have
3 someone possessing a gun who can't. He's got -- he's got a
4 concealed weapon on him. He's yelling at someone, threatening
5 them to kill them -- excuse me -- to shoot them, to clap his
6 ass. And we know what happens after that. I think the
7 evidence is clear, Ladies and Gentlemen, that these actions,
8 this -- when we talk about the seriousness of the crime, this
9 is serious. Mr. Evans knew it wasn't a joke. He tried to stop
10 it. I don't think there is any more weighty serious crime than
11 taking a gun into a crowded area of a city, getting into a
12 beef, and saying, "I'm going to take it out and shoot you."

13 And, again, I go back to what I said at the beginning.
14 This is not a random incident. This is not someone in a city
15 who stumbles upon a gun and drops it and it accidentally
16 discharges.

17 The next factor is the active resistance of Tindle. And,
18 again, the active resistance comes in with a failure to abide
19 by commands. And, of course, we have gone through this enough,
20 but the commands were to "show me your hands" in the plural,
21 and as we know, based on way, way back when when we heard from
22 the experts, the hands is what you need to see. The gun is a
23 tool that is dangerous. And once the trigger is pulled, we're
24 in trouble. So the idea here -- and this is what leads me to a
25 little confusion, is that, you know, the idea of warnings and

1 surrenders has confused me through this trial. It's really
2 confused me, and it even confused me more when Mr. Nisenbaum
3 got up and said it's beyond belief that you didn't know that he
4 was -- that he was -- that you didn't warn him correctly and
5 you didn't know that he was surrendering, and the reason why
6 that's confusing me is because the arguments have been that he,
7 being Mateu, gave improper warnings. He said, and we've heard
8 it a lot, he should have said he was a police officer and said
9 he was going to shoot. And the reason for that is because if
10 he had done that, Tindle would have heard him and understood
11 the gravity of the situation and would have surrendered. He
12 would have thrown the gun to the side and ended this tense
13 situation.

14 But at the same time, this is where it's just very
15 confusing to me. The argument is that Tindle heard the
16 improper warnings, and he tried to surrender but was unable to
17 surrender. And it's confusing because I don't think those two
18 theories can coexist.

19 But I think the evidence that has been presented to you
20 shows you, Ladies and Gentlemen, that Mr. Tindle was actively
21 resisting.

22 The final negligence factor is improper tactics, and you
23 heard way back when from Mr. Clark and Mr. Papenfuhs, and what
24 it comes down to for them, Ladies and Gentlemen, is, as we have
25 discussed, Clark hasn't trained anyone in 25 years, and he said

1 Mateu should have walked to the right into the location where
2 that gun was pointing, and he should have waited for Tindle to
3 shoot again.

4 And Papenfuhs, Ladies and Gentlemen, he's an individual
5 who trains and trains officers specifically how to react to
6 situations such as we have here, and Mateu -- he testified that
7 Mateu properly ran to the threat, got himself into the correct
8 position, and couldn't wait any longer.

9 For this phase of the case, Ladies and Gentlemen, the
10 plaintiffs have not proven that Mateu was unreasonable. These
11 are new factors, and I suggest you use all of the evidence in
12 phase 1 and phase 2 and test these factors, test these elements
13 that need to be proven.

14 If you test them and you believe that Mateu was at fault
15 for his -- for the death based on his negligence, again, you
16 turn to Mr. Tindle. You turn your attention to the conduct of
17 Mr. Tindle on the day of the incident. The key to this -- and
18 I have gone through this evidence with you, Ladies and
19 Gentlemen. I will very briefly go through it again -- is that
20 we undoubtedly have the burden to prove that Mr. Tindle caused
21 his own death.

22 And the way it's proven is twofold, Ladies and Gentlemen.
23 Number one, he was negligent. It's kind of an "or." Or the --
24 he was negligent or he was negligence per se. Again,
25 "negligence" means he was acting unreasonable, and "negligence

1 per se" means he was breaking the law. And once those two are
2 proven, then you take a look at that negligence, and that
3 negligence per se was a substantial factor in causing
4 Mr. Tindle's death.

5 And I ask these questions rhetorically at this point
6 because you have heard it quite a few times before, but I would
7 ask you, Ladies and Gentlemen, if these actions of Mr. Tindle's
8 are -- are actions and conduct that you would describe as
9 reasonable, and/or are they actions -- and it goes hand in hand
10 of someone who is unreasonable, of someone who is just out
11 there breaking the law, and we have already focused on
12 walking -- excuse me, loading the weapon, putting it in your
13 pocket. It's a felon in possession. Then putting that firearm
14 in your pocket and walking the streets of Oakland, getting into
15 the argument, not listening to the good Samaritan, threatening
16 to shoot Newton, making a decision to restart the argument when
17 it's over and you could have walked away. Not listening to
18 Mr. Evans when he says it's not worth it. When everyone else
19 runs away, and Mr. Turner runs at him, that's when the shooting
20 takes place.

21 Someone who is unarmed gets shot in the leg. One goes
22 into the barber shop. I ask this rhetorically, Ladies and
23 Gentlemen. Those aren't the actions of a reasonable person.
24 Those aren't the actions of someone who is trying to obey the
25 laws.

1 Ms. Turner I've described as a complicated witness. She
2 found herself in an extremely difficult situation when she
3 testified. I didn't make it any easier for her because I had
4 to ask her questions based on the evidence. What did she
5 testify to, Ladies and Gentlemen? That while she has seen
6 Mr. Tindle with firearms in the past, she definitely didn't see
7 him with one on the day of the incident. He didn't have one in
8 his hand. He didn't have one in his pocket. Based on the
9 testimony of Mr. Evans, based on the testimony of Ms. Wong,
10 based on the video, we know that can't be true.

11 She did agree that the two of them didn't have any bad
12 blood and the argument was over shoes, but then what we learned
13 is that she put off. She was the exact opposite of Mr. Evans.
14 She said that Mr. Newton was the reason why we're here. She
15 disagreed with what -- everything that Mr. Evans said. She
16 disagreed that she was egging on Mr. Turner. She disagreed
17 that the fight was over; they walked away. She disagreed that
18 Mr. Tindle said, "I should clap your ass." She disagreed that
19 Mr. Evans said, "It ain't worth it, just stop."

20 She also said -- which I pressed her on and if -- this is
21 my job, Ladies and Gentlemen, but she -- there is a witness who
22 saw this entire thing, and there is a reason why I kind of
23 painstakingly went through the video and these photographs from
24 the AC Transit. And one of -- and I think it might be this
25 one. Exhibit -- she circled "that's me right there." And she

1 is standing right next to Mr. Tindle and Mr. Turner. Yet in
2 her testimony, on prior occasions and today, it's a little
3 confusing -- was that she never saw anyone with a gun. She
4 never saw a shooting. That she was standing in the middle of
5 the street when the shooting took place. That's been proven to
6 be wrong.

7 And you can take this photograph in conjunction with the
8 other photograph where you see Officer Mateu running to the
9 corner and you can take it in conjunction with the video. I
10 think when you take those pieces of evidence together, it will
11 show you that there is a person who knows exactly what
12 happened, who knows that gun came out of Mr. Tindle's pocket,
13 was fired at Mr. Newton, went through his leg, and went through
14 the barber shop window.

15 I -- put it simply, I don't think we can believe
16 Ms. Turner when she says that she did not see the shooting.

17 I have a little bit more, and it's very important. Okay?

18 I don't know what "a little" means. It might be a little
19 bit more -- a little more than a little.

20 Damages. Mr. Nisenbaum talked about damages. Damages,
21 Ladies and Gentlemen, are not easy to talk about. I don't feel
22 comfortable talking about your decision, if you get to that
23 point, to award money for someone who is no longer with us.
24 But that's what the law requires. It's my job to discuss this
25 issue. It's your job to follow the law, and you've taken an

1 oath to follow the law.

2 I think I need to give you some guidance if you think
3 Mateu was at fault at all for Mr. Tindle's death.

4 What can you not talk about? Again, it's the sympathy,
5 it's the emotions. You must -- you got to keep -- if you get
6 to this point and you're discussing damages, you got to keep
7 the emotions out of the discussion.

8 And the jury instruction tells you you can't consider how
9 sad or grief stricken the children are because their father is
10 gone. That's what the jury instruction says.

11 And I'm not trying to rile you up here. I'm just telling
12 you what you have to do. You have got to keep the emotions out
13 of it. I'm trying to focus you on what the law says and what
14 the evidence has been presented here.

15 The first part is the funeral expenses, the \$10,000,
16 whatever it is. We are not contesting that if you get to this
17 point.

18 What I want to focus your attention on is the second part,
19 which is the children's loss and Mr. Tindle's love, affection,
20 moral support, care, assistance, and the guidance he supported
21 when he was alive. The measure of damages, Ladies and
22 Gentlemen, is not the value of his life. It's not the value of
23 his life. Not how much his life was worth. There shouldn't be
24 any kind of comparison of the value of his life to something
25 that is inanimate, that's high in value, such as a piece of

1 art, a jet airplane or whatever. That's not what you are to
2 assess.

3 The loss is to the children because their father is not
4 around anymore. And the loss has to be evaluated by what
5 Mr. Tindle provided before he passed, the support he provided
6 to the children.

7 And what is not surprising, Ladies and Gentlemen, is that
8 Mr. Nisenbaum said that they're not asking you to -- to award
9 any damages based on financial support. That's what he said.
10 And that made sense that that was conceded because the evidence
11 in the case did not show that he financially supported his
12 children.

13 The evidence is not clear, I would say, on how often he
14 stayed with his children, Ladies and Gentlemen. We know that
15 he lived part time with his mother, and we know that he lived
16 part time with Ms. Turner. At one point, Ms. Turner told the
17 police that he comes and goes as he pleases. Another time
18 Ms. Turner told the police that she has full custody of her
19 children. We know that they never shared a bank account, they
20 never shared household expenses. This is the evidence when you
21 determine the support that Mr. Tindle supplied for his
22 children. And Ms. Turner at one point testified, that he helps
23 out when he can.

24 Now, Mr. Nisenbaum argued that Mr. Tindle was expected to
25 live 50 years and all of the events that he's going to miss out

1 in those 50 years for the support of his children. And I would
2 focus your attention again, Ladies and Gentlemen, back to the
3 jury instruction that says that's what a normal person is
4 expected to live, 50 more years, someone who dies when they are
5 27. And it says that some may live longer and some may live
6 shorter, and that's based on their lifestyle, their habits.

7 And, again, we have to rely on what's in the record, and
8 when I say "the record," what has been brought into this
9 courtroom. And the evidence, Ladies and Gentlemen, is that
10 Mr. Tindle led a very dangerous lifestyle. It's his
11 lifestyle -- that's what it asks you. Look at the evidence.
12 Is this someone who we expected -- is this the normal person,
13 the person who has been to prison, who has beat up a police
14 officer, who is always around guns, who has had difficulty with
15 the mother of his children, to say the least. And what does
16 this incident say about his lifestyle choices, Ladies and
17 Gentlemen? We know this was an argument over a pair of shoes.

18 And I just ask you, if you get to this point, what
19 evidence are you relying on if you're determining that
20 Mr. Tindle is someone who would be around, who would be
21 supportive of his children for another 50 years. I'm
22 questioning that.

23 I am now near the end.

24 Your verdict is what ends your involvement here. And
25 "verdict" comes from a Latin and French word which means "to

1 speak the truth." And what's the truth for this phase of the
2 trial, Ladies and Gentlemen? The focus of this phase of the
3 trial is Sahleem Tindle. He died, and that's why we're here.

4 Without question, Mr. Tindle did not want to die on the
5 day that he died. No one in his family wanted him to die.
6 Officer Mateu did not go to work that day with the idea that he
7 was going to shoot someone. He knew police work was dangerous,
8 but he didn't think he was going to need to shoot someone.

9 I am turning into the person where you can say stop saying
10 the same thing over and over, but your verdict cannot speak to
11 sympathy. You cannot be influenced by that. Your verdict has
12 to speak to the evidence and the law.

13 And there are two parties in this courtroom. We represent
14 Officer Mateu. And on his behalf, I'm requesting that your
15 verdict speak the truth and very simply that he did his job
16 correctly on January 3, 2018. You're not judging him as a
17 person. I understand that. You're judging him how he did his
18 job on January 3, 2018.

19 And you need to solely base your evidence -- excuse me --
20 solely base your verdict on the evidence that's been presented
21 to you.

22 Your job has been made easier, Ladies and Gentlemen, based
23 on the position of the plaintiffs, what I just heard
24 Mr. Nisenbaum say. What he said, he conceded, Mr. Tindle had
25 the gun before this incident. That's what he said. Okay.

1 He also conceded that Mr. Tindle should have walked away.
2 I agree with that. Because what is the evidence and what has
3 it proven?

4 Tindle, Ladies and Gentlemen, was the sole cause of this
5 incident, now that you know everything. If you previously,
6 during your deliberations, got bogged down about a possible
7 struggle over the gun, do not get bogged down now. What you
8 did not know then, you now know. He brought the gun. Without
9 the gun, we are not here.

10 The gun comes into play because he brought it. The gun is
11 fired because Mr. Tindle brought it. Laws are in place in our
12 country and our state to make sure that felons do not have guns
13 because society knows that bad things happen when a felon has a
14 gun. The laws are in place to avoid what happened here.

15 There might be a dispute of how this gun was fired.
16 Ladies and Gentlemen. There should be no dispute -- and like I
17 said, your job has been made easier for you because the
18 plaintiffs do not dispute who brought the gun. Tindle brought
19 his loaded gun that day. Newton was unarmed. Tindle said he
20 was going to shoot Newton, and Newton got shot.

21 When Mateu approached, the gun was in Tindle's left hand.
22 The actions of Mr. Tindle caused the situation. When Joe Mateu
23 heard those gunshots, he ran to the emergency situation created
24 by Mr. Tindle. He confronted the threat to himself, to
25 Mr. Newton, to Oakland, and he followed his training to make

1 sure that Tindle would not shoot anyone else.

2 And the question is what will your verdict say? Will it
3 be the truth? Will it be that Officer Mateu is supposed to
4 stay where he is? To not run to danger? To take cover and
5 wait? To wait until Mr. Tindle shoots Newton again? Wait
6 until another bullet finds someone in the barber shop?

7 We just hope that the verdict says the truth, Ladies and
8 Gentlemen. And the truth is that you should check "no" for the
9 first question, that he did not act unreasonably.

10 And if you find, Ladies and Gentlemen, that he, being
11 Mateu, is at fault at all for the death of Mr. Tindle, we would
12 ask that you place his percentage of fault at a very, very low
13 number.

14 Like I said, I agree about certain things. I'm confused
15 about other things. When we think about this, it must be very
16 confusing how we got here, when you think about it.

17 Now, when you're done, you can talk to your significant
18 others, your family about this case. It seems confusing that
19 we're all here over an argument over shoes. It doesn't make
20 any sense.

21 How can this be? How can an argument over a pair of shoes
22 on the ground lead to what you guys have dissected during the
23 first part of the case, a shooting at 4:00 in the afternoon in
24 broad daylight in a very busy section of Oakland. The question
25 is how do we make sense of this?

1 Ladies and Gentlemen, I would just suggest -- and you guys
2 are going to work through it like you've done before. I would
3 suggest it is our position that there shouldn't be any
4 confusion about who is wrong here. When Mr. Nisenbaum said he
5 should have walked away, remember, Mr. Evans got involved, he
6 should have walked away. I went back, and I double checked
7 Mr. Evans's testimony. Mr. Evans agrees with Mr. Nisenbaum,
8 because he knew something bad was going to take place. He knew
9 it based on what he knew about the neighborhood, based on what
10 he knew about Mr. Tindle, based on what he knew about that gun
11 that Mr. Tindle had brought. And when he saw him coming
12 back -- and I want to make sure I'm clear about this -- he said
13 his last effort before he ran and took cover was, "Hey, don't
14 come back." Like "stop," like he had tried to do before. "It
15 ain't worth it."

16 And I think Mr. Evans was speaking for the society that's
17 passed these laws about guns. And I disagree with
18 Mr. Nisenbaum about you didn't hear from him. It's not that
19 important because he wasn't here. Because while you didn't
20 hear from him on the witness stand, I'd ask you, Ladies and
21 Gentlemen, to consider whether his testimony was loud and clear
22 to you, that he told you the people in society cannot act as
23 Mr. Tindle did. You can't have a wild fight and gunfire over a
24 pair of shoes.

25 And that gets us to this jury instruction, and I'm going

1 to end on this, and then I'll sit down.

2 Ladies and Gentlemen, the way our society works, we live
3 in a society in which we expect people either to act reasonably
4 or follow the law. That's how it works. And the evidence that
5 you're going to work through confirms that Mr. Tindle did
6 neither of those. And I'd ask you that you use all the
7 evidence from the first phase, from the second phase of the
8 trial, and if you use that, you will determine, Ladies and
9 Gentlemen, for this, for this test of the reasonableness of the
10 police officer and whether he did his job properly, that you
11 will determine that in fact Officer Mateu did his job properly
12 when you have all the evidence and you know the whole story
13 that went into this unfortunate shooting and unfortunate death.

14 I thank you very much for your time this afternoon.

15 **THE COURT:** Okay. Let's stand and stretch, and then
16 we will get the rebuttal and finish up for the day.

17 (Pause in proceedings.)

18 **THE COURT:** Ready, Mr. Burris?

19 **MR. BURRIS:** Thank you, Your Honor.

20 **THE COURT:** You are going to have to stay next to one
21 of those two mics.

22 **MR. BURRIS:** Yes, I understand.

23 **REBUTTAL ARGUMENT**

24 **MR. BURRIS:** You know, in listening to counsel's
25 argument, I was -- thought about what's the prize here? Let's

1 keep our eye on the prize. The prize here is getting to the
2 truth on the counts that have been put before us.

3 Counsel's whole argument on negligence was really about
4 hindsight. It was about hindsight. Because the question of
5 negligence on the officer is what did he know at the time he
6 did the shooting and what did he do? It has nothing to do
7 with -- at all who Mr. Tingle [sic] was before. It has nothing
8 to do at all what happened before, years and years before, or
9 even what happened as they were walking up the street, because
10 the officer did not know. He did not know.

11 And so negligence is what was his conduct at the time he
12 committed this shooting, when he shot him three times in the
13 back. What was the conduct that he engaged in and was his
14 conduct negligent or not.

15 We presented evidence to you in the first phase that
16 suggests there were cues, there were things that occurred that
17 he missed and he misinterpreted, and by misinterpreting them,
18 he then shot and killed him when, if he had interpreted
19 correctly, he would not have had to use deadly force. That's
20 really what is at issue here. It's not about what happened
21 later. We will talk about that because that goes to a
22 different aspect of the case.

23 But the first question was: Was this officer negligent.
24 Not that he's a good guy. Not that he was doing fare evading
25 stuff. It's not even the fact that he ran over there. The

1 question is when he ran over there, what did he do? And how
2 did he do it? And what judgments did he make? And all those
3 factors, I talked to you about before, they're totally relevant
4 as it relates to was his tactics proper or not. It's one of
5 the factors to consider. Did he exercise proper tactics in
6 approaching? And as a consequence of that, did those tactics
7 lead him to make a decision to use deadly force?

8 If he had acted properly, he would not have used deadly
9 force. If his judgment was better. If he had recognized that
10 when the hand went up, that was a sign of surrender or not. Or
11 he would have recognized when he made a mistake and thought
12 Mr. Tindle was standing up when he wasn't standing up and he
13 shot him because of that. Or he forgot that the last time he
14 saw the two men, they were grappling over the gun. They were
15 on the gun. And it wasn't like one person had it. They were
16 grappling over the gun.

17 And if he had recognized that when the back was turned and
18 they were down on the ground, he himself would have seen that
19 two men were grappling, and just like the other officer --
20 Mr. Papenfuhs had said, two men grappling over a gun, you can't
21 shoot either one of them. That is the facts, Ladies and
22 Gentlemen, of what, in fact, he knew at the time.

23 The fact that -- all this other evidence that came in
24 later, that may go to some other issues, but we're not here to
25 decide the question or the fact that Mr. Tingle *[sic]* made --

1 he thinks he's a bad guy because he had a prior criminal
2 history. That doesn't mean the fact that he argued with his
3 wife and his girlfriend on the street -- that doesn't make him
4 a person you get to kill him because his argument is really,
5 well, Tindle was a bad guy. He liked guns. And as a
6 consequence of liking guns, he puts himself in a position where
7 he should be -- he can be killed and it's lawful.

8 Well, is it really? Do we kill bad people, people we
9 think are bad because they're bad? Is it a character question
10 that we're looking at here? Because that's the argument.
11 That's the argument by counsel. It's a character argument.

12 And there is nothing in any of these records and
13 instructions that you have been given that you can kill a
14 person because they have bad character. Even under the laws
15 that the Court had given you, none of those laws are
16 death-sentence laws that you get to kill the person because he
17 carried a gun. You get to kill the person because he had a
18 loaded gun. You get to kill the person because he's walking
19 down the street and he's cursing and he's yelling and he picks
20 up a bag. Do you get to kill him because of that? No.
21 Absolutely not.

22 And so this whole issue about what was going on between he
23 and Mr. Mayfield *[sic]*, obviously there is something that took
24 place. And a reasonable person can view from Mr. Tingle's
25 *[sic]* point of view when he sees those men over there talking,

1 he's not from the neighborhood, he's taking photos, he can
2 think there's potential danger here. You know, there is
3 potential danger. This could conjure up a question of
4 self-defense in his own mind's eye because he's not from the
5 neighborhood. Mayfield [sic] is over there with his boys, and
6 then he wants to take a photograph. Why does he want to take a
7 photograph? Because he's a bad guy? No. He wants to take a
8 photograph because he doesn't know about these guys and this
9 neighborhood.

10 I'm not making any kind of judgment about the
11 neighborhood, but in his own mind's eye, he had some real
12 concerns about Newton and -- Newton and his boys. And remember
13 this. Maybe Newton was unarmed and maybe he saw what appeared
14 to be a gun, but he, in fact, charged. So then he's charging,
15 and then they start grappling. They start grappling over the
16 gun.

17 Well, anything about that would then suggest you get to
18 kill one person -- that you get to kill Mr. Tingle [sic]
19 because of that? Does that make him a person that the --
20 the -- that the defense counsel says well, it makes him more
21 worthy of being killed. You should not give him any credit.
22 He's unworthy as a human being because he has had a criminal
23 record.

24 There is a lot of sociological reasons before those kind
25 of issues, but even so, that doesn't mean that you get, because

1 of that, his protection, the veil that's around him, around all
2 of us that is entitled to constitutional protection, the laws
3 that protect us -- it isn't diminished. It doesn't become
4 less. It doesn't exist because you have a prior conviction or
5 you've had to carry the gun or you've had a fight in the street
6 with your girlfriend.

7 Remember this, putting this in context, these are
8 20-year-old people. They're like -- anybody recognize a 20
9 year old, they're arguing back and forth all the time. There
10 is a push/push -- push/pull situation. That doesn't make her a
11 bad person as counsel is trying to suggest that somehow she is
12 devious in some way. This is her guy. And they tried to make
13 it up. They tried to handle it. But that's not up for us to
14 make a judgment about. When we really get down to it, that
15 really isn't our deal.

16 So what counsel looks at -- and I'm just suggesting to you
17 that the first portion you should keep in track in your
18 analysis. What did the officer know at the -- and what did he
19 do at the time he did -- he fired his firearms? It doesn't
20 matter what was going on before because he didn't know that.

21 I think that one of the things we've talked about often is
22 hindsight. Counsel's argument was about hindsight. Don't give
23 any credit at all to Mr. Tingle *[sic]* and his life because of
24 hindsight, and that the officer -- because he, in fact, was an
25 officer and he had been 15 years on the force and he was doing

1 whatever he was doing, therefore he deserves credit and he
2 can't make a mistake.

3 He can -- he can make a mistake. And he can use bad
4 judgment. He can misperceive. He can kill someone who
5 shouldn't have been killed at the time, period.

6 So on the question -- the next portion of the -- of the
7 jury verdict, what you have to decide, and that is Mr. Tingle's
8 [sic] negligence. What was his negligence? One would
9 certainly -- and we would not dispute that carrying a gun under
10 these circumstances creates an issue for you. But that doesn't
11 mean that whatever happened was your fault -- or his fault.
12 Mr. Newton have something to do with that. The sense of the
13 neighborhood has something to do with that. And so, yeah,
14 there was a feeling of self-defense atmosphere that could
15 happen to them.

16 Well, what is that? Does that mean that the officer's
17 conduct was purely negligence that caused his death? Should be
18 excused period because of what was taking place between
19 these -- these individuals beforehand? The law doesn't say
20 that. It says you should give some thought to it. You could
21 give some percentage.

22 There is no question. But you got to remember that at the
23 time, what did Mr. Tingle [sic] do that caused the officer to
24 shoot and kill him? He didn't know what the officer was trying
25 to do. He tried to put -- he tried to put his hands up. That

1 should have told the officer *hey, look out, look out, I'm*
2 *trying to surrender*. The officer should have been able to see
3 that Mr. Newton was down on the ground, perhaps holding his
4 hand down. Circumstantial evidence. That goes to the question
5 of negligence.

6 Let me go to this whole question of the gun. I don't want
7 to have a lot of time on the gun, but there is evidence that
8 doesn't prove anything. It's just like going in the circle.

9 The DNA that they make reference to, is that not
10 conclusive evidence that he possessed a gun on that particular
11 day? I think the evidence is pretty clear, the DNA could have
12 been put on that gun at any point in time, and we don't know
13 that Mr. Newton didn't -- wasn't on that gun. We also know
14 this: There was gunpowder on Mr. Newton's hand. It's not
15 conclusive, but it means that his hand was right there with
16 that gun, and he could have pulled that trigger himself, which
17 makes more sense when there is no gunpowder on Mr. Tingle's
18 *[sic]* hand. It only means that there was some grappling going
19 on, but all I'm saying to you is that's not conclusive evidence
20 of anything. The only thing you know from that is that both
21 those men were grappling, and we know that from the video. We
22 don't need anybody to tell us that. We know that they were
23 grappling. And we also know that the officer said before he
24 shot him, shot Mr. Tingle *[sic]*, the two men were grappling
25 over the gun.

1 So, again, these are red herrings, if you will. It's all
2 about demonization of Mr. Tingle [sic], not giving him any
3 credit for his life. Given that who he was at whatever age he
4 was in, he was growing. He was a young man trying to grow.
5 Took his whole 50 years away from him in an instant. And what
6 the -- and what the defendant wants to do is to diminish the
7 life, diminish the life as if it has no value. That part is
8 hard to -- and that's just for you to decide.

9 Now, this -- on the issue of damages, you know, I was
10 thinking about it the other day, and what you lose -- what
11 is -- what is these kids' loss? I was thinking about the
12 little girl who doesn't know her dad. But you know what she
13 missed? There is going to come a time when that little girl
14 was going to have her dad have to comb her hair. And any dad
15 who has been through that, they know what it's like to try to
16 comb a little girl's hair. She doesn't get that.

17 And that boy, you know what he missed? Let me tell you
18 what he missed. He was going to be 12 years old soon. He was
19 going to miss the talk that every African American man has to
20 give to his son to let him know the world is a very complicated
21 place. It is not just the gangsters you got to look out for,
22 you got to look out for the police, too. That's the talk that
23 he doesn't get, that he needs to have. Somebody has got to
24 give him that talk.

25 All of these things that a dad is going to give to his

1 son, we saw evidence of that. Counsel wants to diminish that
2 because he didn't think he was leading his kind of life. But
3 people get to decide their own lives. And their lives are
4 decided often by circumstances: Certain conditions, place of
5 birth, any number of reasons. But poor people can have good
6 relationships with their children, too. They can live in a bad
7 neighborhood and still love their children.

8 **MR. MORIARTY:** Objection, Your Honor. That goes
9 against the jury instruction.

10 **MR. BURRIS:** No. It's about the quality of a
11 relationship.

12 **THE COURT:** I don't understand the objection.
13 Overruled.

14 **MR. MORIARTY:** Well, the objection is the jury cannot
15 consider the poverty or the wealth of the plaintiffs, so it
16 goes against the jury instruction.

17 **THE COURT:** That is true. You cannot consider their
18 poverty.

19 **MR. BURRIS:** The issue is not so much the poverty,
20 it's that wherever you live and whatever your relationship is,
21 it is the relationship regardless. And, sure, counsel has his
22 arguments to diminish the relationship, but I'm going to tell
23 you, when we see those photographs of this man with his
24 children, with his daughter, with his son, you can imagine and
25 easily understand the affection that existed there, the desire

1 to train, to try to teach, to try to love, to try to hold, and
2 to protect. Those are the kind of conditions that you can't
3 necessarily diminish because of the quality of the life that
4 counsel would try to put up against it by being disingenuous in
5 the manner in which he describes it.

6 All I'm really telling you is this: The way to look at
7 it, this case, is there negligence? I don't think there is any
8 dispute, and I don't have to tell you. I've given you the
9 facts there.

10 And then the question, is there some negligence on the
11 part of Mr. Tingle *[sic]*? One could argue yes. Some part.
12 But he didn't cause his death. The officer killed him. So if
13 he has some cause of -- some contributorily part of it, it's
14 the small percentage, 10 percent or so. But certainly he's not
15 negligent up to the point where he is the substantial cause of
16 his death. Let's not be confused here.

17 The substantial cause of the death is the officer running
18 up on him, shooting him three times in the back as he was
19 trying to surrender and he was being held down. And counsel
20 doesn't like you to talk about the three times in the back. I
21 want you to look at the video yourself, and you can see what
22 position he was in on the ground. What basis was the officer
23 there to then come up and do what he did? None. He could have
24 taken the time. He could have moved around. He could have
25 been in a position of cover. He could have not misinterpreted

1 the movement. He could have -- he could have misinterpreted
2 the man coming up. He could have given him a warning. All of
3 these factors go to your consideration as to whether the
4 officer was negligent and whether that -- those -- absence of
5 those conducts contributed to the use of the force that was
6 unnecessary. That's the factor to consider.

7 The next portion, of course, is Mr. Tingle's *[sic]*
8 negligence. And none -- this whole background, this sort of
9 slander, character assassination that goes back 10 years -- and
10 he hadn't been convicted of anything in 10, 12 years. He has
11 had his disputes with his wife, but counsel acts like these are
12 important facts to consider, for you to consider. Really?
13 Really? What, if any, did they contribute in any way to what
14 happened on that particular night? What happened in 2010 that
15 contributed to the conduct of the officer on 2019 -- 18? What?
16 What took place in the arguments in the street with -- with
17 Ciara and 15 level -- whenever it was that contributed to your
18 analysis about whether or not he was negligent at the time he
19 was shot and killed? Any fair, objective of those analysis of
20 that would suggest no, those are stand-alone events. Those are
21 character assassinations.

22 So -- and when you look at the end -- I -- when you look
23 at the end, just look at the negligent -- I'm not telling you
24 how to do your job. I'm just giving you a way forward. It's
25 all I'm trying to do. A way forward.

1 In the jury form, it says negligence. Well, you know what
2 those facts are to look for negligence, and then after that,
3 the question is negligence on the part of Mr. Tingle [sic].
4 Well, you have some evidence that you can argue that merely
5 having a gun in and of itself was negligent, but I don't know
6 that you could say that he was involved in a fight with
7 Mr. Tingle [sic] -- with Mr. Newton is necessarily that because
8 we know for a fact there was crowds gathering around. There
9 was indications of Mr. Tingle [sic] having to be mindful of
10 where he was; Mr. Tingle [sic] taking photographs because he
11 wanted to make sure these people come at him in his
12 neighborhood, he know who they are. Well, why would he do that
13 unless was some concern that the neighborhood he was in and the
14 people he was involved with, he didn't know them. Life being
15 what it is in the community, he had some real concerns about
16 it. That doesn't mean you get to kill him and that doesn't
17 make him a bad person. He probably was being protective of his
18 family at the time.

19 So -- and counsel's suggesting that he is getting up out
20 of bed that day and going to do something bad, well, what did
21 he really do that day? He's with his family. He's in West
22 Oakland. He's trying to get to BART to go to San Francisco.
23 The fact that he has a gun in and of itself doesn't mean he was
24 out to get anyone. It may mean he was mindful of protecting
25 himself in case something did go down. That doesn't make him a

1 bad guy, and it doesn't mean the police get to shoot and kill
2 him either.

3 So I don't know -- and don't feel compelled to go through
4 all the comments that counsel has made. I would only suggest
5 that the analysis is one of whether a factual basis to conclude
6 that negligence had occurred, and secondly, what, if any,
7 significance do you want to give there terms of a percentage to
8 the carrying of the gun and the fight that took place. I would
9 suggest to you that is less than 25 percent. And at the end of
10 the day a substantial award should be given for the children,
11 the children, because it's 50 years from now, and you know
12 what? The real deal with the children isn't 50 years from now.
13 It's 10 years from now. It's 15 years for the little girl.
14 It's -- it's adolescence. It's late teenage childhood. And
15 then adolescence and then off from there. That's what damages
16 really are that the kids have been robbed of their fatherhood
17 during their childhood. That's irreplaceable and should be
18 given a significant award, an acknowledgment of it.

19 Thank you.

20 **THE COURT:** Okay. Thank you.

21 Ladies and Gentlemen, you are now to go and deliberate.
22 Obviously you don't have to do it today. It's already past
23 4:00.

24 Just a reminder that your verdict must be unanimous once
25 again. I think you know how this all works.

1 Let us know when it is -- what your schedule is going to
2 be. You've already reached one verdict, so you understand how
3 it's important to have discussions and to communicate with each
4 other, and we expect that you will do so in this next round.

5 I don't -- I also don't want you to rush. If there's --
6 if you need time, you take your time. If we get to the end of
7 the day tomorrow, we will have a conversation. Okay? But that
8 shouldn't be part of your calculus. All right?

9 Any questions before I send you back?

10 Yes, sir?

11 **A JUROR:** I have a question about the law. Can I ask
12 it here?

13 **THE COURT:** What's your question?

14 **A JUROR:** It's about applicability of hindsight to
15 Question 1. I just want to double check if we are to apply
16 hindsight or the reasonable objective officer standards to
17 Question 1.

18 **THE COURT:** So the law with respect to negligence
19 is -- well, let me talk to the lawyers. We don't talk about
20 hindsight in this instruction. We did with respect to the
21 constitutional claim, but before -- before I give you -- I will
22 have a response for you in the morning. Okay?

23 Any other questions? No? All right. Then we will see
24 you back here tomorrow, and I will have a response for you
25 then. Okay? Thank you.

1 (Jury retired to deliberate at 4:15 p.m.)

2 (Proceedings were heard out of presence of the jury:)

3 (Recess taken at 4:15 p.m.)

4 (Proceedings resumed at 4:20 p.m.)

5 **THE COURT:** We're going to go back on the record with
6 respect to the use of the issue of hindsight in terms of an
7 analysis of the California negligence claim, and I was asking
8 Mr. Burris, given that he argued it, whether he has law to
9 support the statement with respect to California negligence as
10 opposed to the constitutional Fourth Amendment claim.

11 So, Mr. Burris.

12 **MR. BURRIS:** I don't have any law directly in front of
13 me. I've always argued hindsight because that's kind of a
14 standard argument that's made in terms of you can't make
15 decisions about police officer's conduct based upon hindsight.
16 And so that seems to be pretty standard to me in terms of an
17 argument.

18 Now --

19 **THE COURT:** Hold on. I'm finding something. Hold on
20 just a minute.

21 Okay. *Brown vs. Ransweiler*, 2009, 171 Cal.App.4th 516 at
22 527 to 528. This is the use note, and to 440. "The
23 reasonableness of a particular use of force must be judged from
24 the perspective of a reasonable officer on the scene rather
25 than with 20/20 vision of hindsight. The question is whether

1 the officer's actions are objectively reasonable in light of
2 the facts and circumstances confronting them without regard to
3 their underlying intent or motivation. In calculating whether
4 the amount of force was excessive, a trier of fact must
5 recognize that peace officers are often forced to make
6 split-second judgments in tense circumstances concerning the
7 amount of force required."

8 So it appears that Mr. Burris is right.

9 **MR. NISENBAUM:** That is --

10 **THE COURT:** We'll talk about this, though. If you
11 want more time, we can talk about it at 8:00 a.m. I'm going to
12 have to send in some kind of response to the juror who asked
13 the question.

14 **MR. ALLEN:** Your Honor, I would just like to
15 reserve -- and hopefully I can see the transcript of what the
16 question was specifically on the record and how it was
17 addressed, and then I could respond.

18 I agree that *Brown vs. Ransweiler* is an accurate statement
19 of the law. It's all in the way that argument was phrased and
20 how we respond. That's all I'm -- and I will wait until
21 tomorrow.

22 **THE COURT:** All he said is -- I asked what his
23 question was, and he said it's about the applicability of
24 hindsight to Question No. 1. "I just want to double check if
25 we are to apply hindsight or the reasonable objective officer

1 standards to Question No. 1."

2 **MR. BURRIS:** The answer to that is "no."

3 **MR. ALLEN:** The answer is "yes, you have" -- well --

4 **MR. BURRIS:** No -- I'm sorry.

5 **MR. ALLEN:** May I finish?

6 **MR. BURRIS:** I'm sorry, counsel.

7 **MR. ALLEN:** Thank you.

8 It sounds like it's a two-part question. It's the
9 reasonably objective officer standard, which says then you must
10 not apply the benefit -- the vision of 20/20 hindsight to how
11 you analyze their actions.

12 **THE COURT:** I think that's -- I think that that's
13 right.

14 **MR. BURRIS:** That's right.

15 **THE COURT:** So what I will ask you to do -- I think we
16 did this with the first jury. But what I can send to them and
17 what you should think about -- are they waiting for a response?

18 **THE CLERK:** Yeah.

19 **THE COURT:** Okay. That's fine.

20 They will be back at 8:00 a.m. tomorrow.

21 **MR. NISENBAUM:** Does that mean you want us here
22 earlier?

23 **THE COURT:** Yep. Unless we are going to do this right
24 now.

25 **MR. ALLEN:** Your Honor --

1 **THE COURT:** Hold on.

2 **MR. ALLEN:** Sure.

3 **THE COURT:** What I'm willing to do is to send back a
4 response to them that is the same -- that takes the two
5 sentences from the Fourth Amendment instruction which you have,
6 and it just says that, "You must judge the reasonableness of a
7 particular use of force from the perspective of a reasonable
8 officer on the scene and not with the 20/20 vision of
9 hindsight. Although the facts known to an officer are relevant
10 to your inquiry, an officer's subjective intent or motive is
11 not relevant to your inquiry."

12 It's two sentences. I can send back one sentence or two,
13 but at least you have some language to consider. They are
14 going to be here at 8:00, so I need a response, which means
15 that we need to be on the record at 7:45, unless you're fine
16 with that response.

17 **MR. NISENBAUM:** We are fine with the response.

18 **MR. ALLEN:** Your Honor, the only thing I would point
19 out is that I understand this to be a question solely to number
20 1, which is the negligence of Joe Mateu.

21 **THE COURT:** Correct.

22 **MR. ALLEN:** All right. And it should be, I think,
23 specified as that because when they get to comparative fault,
24 it's the negligence of Mr. Tindle, and all that we have
25 explored is subsequent actions and what we know of him before

1 is relevant. So I am concerned of confusion there.

2 **THE COURT:** Well, I can say, "With respect to
3 Officer Mateu's conduct, you must judge the reasonableness,"
4 and finish that sentence. I don't know that the second
5 sentence actually, as I think about it, is needed.

6 **MR. ALLEN:** I would ask that both sentences --

7 **MR. BURRIS:** I don't think so, Your Honor.

8 **MR. ALLEN:** I would ask that both sentences be there
9 just because it would be complete to what the statement in
10 *Brown vs. Ransweiler* and *Graham vs. Connors* say. We had it in
11 the first one. I would just as soon keep it complete. And I
12 will submit, Your Honor. We otherwise are fine, but I would
13 ask, for the record, that both sentences be there.

14 **MR. NISENBAUM:** We don't oppose that.

15 **THE COURT:** All right. So what I'm going to do is I
16 will send in a response that has those two sentences but
17 just -- but also says with -- prefaces it with with respect to
18 Mr.-- "with respect to Officer Mateu's conduct," comma, "you
19 are to judge."

20 **MR. NISENBAUM:** Yes.

21 **MR. ALLEN:** Thank you, Your Honor.

22 **THE COURT:** Agreed.

23 **MR. ALLEN:** Agreed.

24 **MR. NISENBAUM:** Agreed.

25 **THE COURT:** Then we don't have to be on at 7:45. You

1 do have to be here at 8:00 when they arrive.

2 One of the things that we -- that I want to do now as
3 opposed to later is -- is understand from you what you want
4 post-trial briefing to look like. And I want it before --
5 there are always winners and there are always losers. So
6 before you know whether you are a winner or a loser or
7 something in between, I want to know what you're willing and
8 agreeable to do. I don't need to push you on this, but I tell
9 my law clerks, trials are the gift that keeps on giving. With
10 a verdict, they don't go away. And I hope everyone and your
11 clients on both sides understand that. We get a verdict, and,
12 you know, if it doesn't get resolved, you don't get it back
13 from the Court of Appeal for three years. That's the standard
14 in the Ninth Circuit. It is three years.

15 **MR. BURRIS:** Yeah. We know.

16 **THE COURT:** To get a response back on an appeal of any
17 jury verdict.

18 I also tell the jurors it is my job to protect their
19 verdict. Whatever it is, whether or not I like it, whatever
20 their verdict is, if it is reasonable, it is my job to protect
21 it. And you should all know that whatever it is, I will do
22 whatever I can to protect their verdict as long as it is
23 reasonable. Because it is their choice, it is their decision,
24 not mine.

25 So there is always post-trial briefing. I need to know

1 what it is, what kind of schedule we're looking at for that
2 briefing. And I'd like to know first thing in the morning so
3 we can all get a plan in place.

4 **MR. ALLEN:** Your Honor, on your typical schedule,
5 because we will follow up on our qualified immunity if it's
6 adverse, what's your post-trial normal schedule? Because I
7 have a -- I have a trial starting March 23rd --

8 **THE COURT:** You know, look, I typically don't impose a
9 particular schedule. I really leave it to the lawyers.

10 **MR. ALLEN:** All right.

11 **THE COURT:** And that's why -- everybody's motivations
12 are a little bit different after the verdict comes in, and so
13 that's why I ask you to commit before you know because I think
14 it keeps people a little bit more honest.

15 **MR. ALLEN:** Okay. Well, we will talk with the Burris
16 office. We, again, have many cases with them and many
17 accommodations we try to work out with each other. We will
18 wait for the verdict. We will -- I can assure you, we will be
19 taking this through the motion practice post trial if it's
20 adverse, unless something changes dramatically in the way the
21 verdict actually comes in. So I just -- but I will work it out
22 with them, and we will come in with a schedule, if we can.

23 **THE COURT:** The only thing you should know is I'm not
24 setting any oral argument for the month of June, just so that
25 you know. No oral argument the month of June.

1 Now, you can always agree to submit on the papers. I
2 don't know -- I have heard your arguments.

3 **MR. ALLEN:** You sure have.

4 **THE COURT:** So much that I have almost torn through
5 stress balls up here. I don't know that I need your argument,
6 but if you would like to --

7 **MR. ALLEN:** Read that loud and clear.

8 **MR. BURRIS:** We got it.

9 **THE COURT:** Good enough. We will see you tomorrow at
10 8:00 a.m.

11 (Proceedings adjourned at 4:31 p.m.)
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Tuesday, March 10, 2020

Pamela Batalo Hebel

Pamela Batalo Hebel, CSR No. 3593, RMR, FCRR
U.S. Court Reporter